

Contract Number PSCXXXXX

for

SUPERIOR COURT CASE MANAGEMENT SYSTEM

BETWEEN

**STATE OF WASHINGTON
ADMINISTRATIVE OFFICE OF THE COURTS**

AND

[VENDOR]

Effective Date: _____
[Add Effective Date]

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SYSTEM CONTRACT

This System Contract (the “Contract”) is entered into as of the *[Date]* day of *[Month]*, 2013 (the “Effective Date”), by and between the State of Washington, acting by and through the Administrative Office of the Courts (“AOC”), and *[Contractor name]*, a *[corporation, limited liability corporation, etc.]* (“Contractor”, as described further below).

RECITALS

AOC issued Request for Proposals ACQ-2012-0401-RFP (“RFP”), which was dated June 22, 2012 and which is incorporated into this Contract by this reference, to initiate a project to acquire a new Superior Court case management system to replace its current case management system, SCOMIS, and to add functionality;

Contractor submitted a proposal in response to the RFP, which was dated *[Month Date, Year]* and which is incorporated into this Contract by this reference;

AOC evaluated the proposal and identified Contractor as the apparently successful contractor for its project;

Contractor desires to enter into an agreement with AOC to meet the needs of AOC for such a new system and associated services; and

AOC and Contractor have agreed that the terms and conditions of this Contract shall govern Contractor’s furnishing to AOC the new system and associated services.

Therefore, in consideration of the foregoing Recitals and the mutual promises and covenants as set forth below, the parties agree as follows:

1. Definitions. The following terms as used throughout this Contract shall have the meanings as set forth below.

1.1 “Acceptance”: A Notice from AOC to Contractor that a Deliverable has conformed to its applicable Acceptance Criteria in accordance with the process described in Section 7.3.

1.2 “Acceptance Criteria”: The subset of Specifications against which each Deliverable shall be evaluated in accordance with Section 7.3 and which shall be described in DEDs, Change Orders and other Deliverables.

1.3 “Acceptance Tests”: The tests or reviews that are performed by AOC to determine there are no Deficiencies in the Deliverables and that must be satisfied before Acceptance can occur as set forth in Section 7.3.

1.4 “AOC Contract Administrator”: The person described in Section 23.9.1.

1.5 “AOC Contract Manager”: The person described in Section 23.9.2.

1.6 “AOC Project Director”: The person designated by AOC to be responsible for financial and contractual matters regarding the Contract, including but not limited to, the person to whom AOC signature authority has been delegated in writing. The terms includes, except as otherwise provided herein, an authorized representative of the AOC Project Director acting within the limits of his/her authority.

1.7 “AOC Project Manager”: The person designated by AOC to be responsible for day-to-day management of AOC resources for the Project and monitoring the status of Contractor’s performance under the Contract.

1.8 “Application Software”: The Proprietary Software and Third-Party Software licensed or sublicensed to AOC from Contractor.

1.9 “Change Order”: A written form, in response to a Change Request, that is mutually agreed to in writing by AOC and Contractor, that modifies, deletes or adds to the Deliverables or Services, in whole or in part, and that is made in accordance with the terms of Section 15.

1.10 “Change Request”: A written form used to modify, delete or add to the Deliverables or Services, in whole or in part, made in accordance with the terms of Section 15.

1.11 “Charges”: The amount(s) to be paid for Services and Deliverables under this Contract, in whole or in part, as described in APPENDIX A.

1.12 “Confidential Information”: Various trade secrets and information of each party that either Contractor or AOC desires to protect against unrestricted disclosure including without limitation AOC non-publicly available Data, nonpublic Specifications, the Software, State security data, any nonpublic information or documentation concerning either party’s business or future products or plans that are learned by the other party during the performance of this Contract, and information that is designated as confidential by the disclosing party and, subject to Section 19.1.2, that may be exempt from disclosure to the public or other unauthorized persons under applicable AOC public records policies, court rules and statutes, or State or federal statutes. AOC Confidential Information includes but is not limited to: client and employee personal information, including names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, and law enforcement records; records designated as “restricted access” by court rule, court records that are restricted by State law, federal law, court rule, court order or case law, and such other Confidential Information as is described in this definition.

1.13 “Configuration(s)”: The setting up of the business rules and workflow of business decisions to be used to implement the specific business rules and workflow of AOC, clerks, and Washington State courts, without utilizing programming language or database queries and the entering of data into tables that a software “rules engine” will process to determine workflow sequences, value limitation, and other variables, all without altering the Software source code.

1.14 “Confirmation”: AOC’s receipt of notice and full supporting and written documentation (including without limitation test results) from Contractor that Contractor has, as applicable: completed a Deliverable in accordance with its Acceptance Criteria or pretested the System for compliance with the Specifications; and confirmed the Deliverable, including but not limited to the System, is ready for applicable Acceptance Tests.

1.15 “Contractor”: *[Contractor Name]*, its employees and agents; any firm, provider, organization, individual, or other entity performing the business activities required under the RFP; and any subcontractor retained by Contractor as identified in the Response and under any amendment to the Contract.

1.16 “Contractor Project Manager”: The individual chosen by Contractor and approved by AOC with management responsibilities for Contractor, as described in Section 4.3.

1.17 “Contractor Technology”: Intellectual property owned by Contractor prior to the Effective Date or developed and owned by Contractor outside the scope of this Contract (including modifications, enhancements or improvements to such intellectual property which are developed hereunder), including Contractor’s proprietary methodologies, project management and other tools, deliverable examples, procedures, processes, techniques, data models, templates, general purpose consulting and software tools, utilities, and routines; the Proprietary Software; and Contractor’s Proprietary Information.

1.18 “Conversion”: The Services performed by Contractor for converting historical and other Data for Processing by the Software and System as described in Section 5.9 of the RFP and of the Response.

1.19 “Converted Data”: The Data which has been successfully converted by Contractor for Processing by the System.

1.20 “Cosmetic Deficiency”: A cosmetic and inconsequential Deficiency in AOC’s judgment.

1.21 “County”: Each County in Washington State.

1.22 “Court(s)”: Any type of court in the State, including but not limited to courts of limited jurisdiction, Superior Courts, the Court of Appeals and the Supreme Court.

1.23 “Critical Event(s)”: The events and Deliverables listed as such in APPENDIX A.

1.24 “Custom Software”: The modifications and changes to the Proprietary Software and other software, including without limitation Interfaces, which are designed, developed or produced by Contractor under the Contract.

1.25 “Data”: Washington State Court, clerk and AOC’s records, files, forms, data and other documents, including but not limited to Converted Data.

1.26 “Days”: Calendar days, unless otherwise indicated.

1.27 “DDI”: Design, development and Implementation.

1.28 “Deficiency”: A failure of a Deliverable or an omission, defect or deficiency in a Deliverable, which causes it not to conform to its Specifications or which fails to conform to reasonable commercial or industry standards for appearance, format and quality or functionality.

1.29 “Deliverables”: Contractor’s products which result from the Services and which are prepared for AOC (either independently or in concert with AOC or third parties) during the course of Contractor’s performance under this Contract, including without limitation deliverables which are described in APPENDIX A, the Work Plan and Change Orders, as well as all designs, structures, and models developed in the course of rendering the Services and incorporated into such products.

1.30 “Delivery Date(s)”: The dates described in the Work Plan for the delivery of the Deliverables and Services to AOC.

1.31 “Detailed System Design Deliverable”: The Deliverable containing the detailed design for the System. The Deliverable will include but not be limited to the user interface designs, detailed design Specifications for each Software module inclusive of purpose, logical flow, Configurations, inputs, outputs, Interfaces and unit test conditions, the physical database design based on detailed design Specifications, Software module designs and associated planned test conditions, and the design for the System to meet Performance Standards.

1.32 “Documentation”: All operations, technical and User manuals used in conjunction with the System, in whole and in part, including without limitation manuals provided by licensors of the Third-Party Software.

1.33 “Downtime”: The time during which the System is not performing its business operations or functions in accordance with Specifications, measured on a monthly basis. Downtime begins when AOC notifies Contractor that the System fails to be Operational. Downtime continues until AOC determines the System has been returned to Operational status in accordance with the Specifications.

1.34 “Enhancements”: All updates, upgrades, additions, and changes to, and future releases for the Application Software in whole or in part, including without limitation: (1) updated versions of the Application Software to operate on upgraded versions of firmware or upgraded versions of Equipment; and (2) updated versions of Application Software that encompass improvements, extensions, Maintenance updates, error corrections, or other changes that are logical improvements or extensions of the Application Software supplied to AOC. In addition, Enhancements will also include changes to the Software as described in Section 13.6.2.

1.35 “Equipment”: The computer hardware on which the Software shall operate following its delivery, all operating system software for use with the Equipment, and telecommunications facilities and services as listed in APPENDIX B.

1.36 “Executable Code”: The version of the Software which is generated by an assembler from the Object Code of the Software and which will be installed and operated on the Equipment.

1.37 “Function(s)”: A discrete capability or function of the Software as described in the RFP, Response, and Specifications.

1.38 “Go Live”: As described in the Work Plan, the event(s) that occurs after Acceptance of the System, in whole or in part, by AOC and AOC decides to put the System, in whole or in part, into Production.

1.39 “Holdback”: The payment amounts held back by AOC from each invoice for Charges for Deliverables, as described in Section 17.5 and APPENDIX A.

1.40 “Implementation”: The process for making the System fully Operational in AOC for Processing the Data in AOC’s normal business operations. Implementation shall be completed when Contractor has completed the Implementation Services according to the Implementation Plan.

1.41 “Implementation Plan”: A plan prepared by Contractor as a Deliverable that details the transition from design and development of the System to full operation of the System by AOC in accordance with Specifications.

1.42 “Interfaces”: Custom Software that is developed by Contractor for transmitting Data between the System and other systems.

1.43 “Key Staff”: Contractor’s key personnel listed on APPENDIX A.

1.44 “Letter of Credit”: A letter of credit securing Contractor’s performance of its Contract obligations and other potential liabilities to AOC from the Effective Date until the end of the System Warranty Period, as described in Section 16 and in APPENDIX E.

1.45 “Maintenance”: Maintenance and support Services which will be performed by Contractor following the Warranty Period for the System and which are described as such in RFP Exhibit O and Exhibit P, Response Exhibit O and Exhibit P and Section 13 below.

1.46 “Maximum Amount”: The maximum amount payable by AOC to Contractor under this Contract as described in APPENDIX A.

1.47 “Notice”: A written document given by a party to the other in accordance with Section 23.21.2.

1.48 “Object Code”: The binary code version of Source Code that has been processed by a compiler.

1.49 “Operational”: The condition when the System is totally functional in accordance with its Specifications and usable for its purposes in the daily operations of AOC, and all of the Data has been loaded into the System and is available for use by AOC.

1.50 “Payment Events”: The events after which Contractor can issue invoices for the Charges, as described in Section 3.1 and APPENDIX A.

1.51 “Performance Standards”: The standards to which the System shall perform during Acceptance Tests and the Warranty Period, as described in the RFP Section 7.6 and APPENDIX C and as otherwise agreed to by the parties in writing.

1.52 “Pilot County”: The initial County in which the Pilot Version of SC-CMS in the Pilot County will be subjected to the Pilot Test.

1.53 “Pilot Test”: The Acceptance Tests of the Pilot Version of SC-CMS in the Pilot County in a Court Site designated by AOC and in a production environment, described in RFP Exhibit N, Section 3.1.

1.54 “Pilot Version of SC-CMS in the Pilot County”: The version of the Software that will have been revised after the Pilot Tests for further Acceptance Tests in the Pilot County.

1.55 “Pilot Version of SC-CMS”: The version of the Software that will be tested in the Acceptance Tests and before the Pilot Test.

1.56 “Processing”: The performance by the Software residing on the Equipment of logical operations and calculations on the Data.

1.57 “Production”: The use of Function(s) in AOC’s production environment(s) and to perform its regular business operations.

1.58 “Project”: The planned undertaking regarding the DDI activities during all Phases of the Contract.

1.59 “Property”: All AOC Equipment, the Deliverables, Work Product, and other AOC real and personal property.

1.60 “Proprietary Information”: (i) with respect to Contractor, the Contractor Technology; (ii) with respect to AOC, Custom Software Source Code; and (iii) information that either party clearly identifies as its proprietary information excluding, any part of the Proprietary Information which: (a) is or becomes publicly available through no act or failure of the other party unless such party’s act or failure is a breach of a confidentiality obligation applicable to the information; (b) was or is rightfully acquired by the other party from a source other than the disclosing party prior to receipt from the disclosing party; (c) becomes independently available to the other party as a matter of right; (d) was previously known and rightfully acquired at the time received from the other party; (e) is developed by one party independently of any disclosures made

by the other party of such information; or (f) is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

1.61 “Proprietary Software”: All computer programs which were developed and owned by Contractor or Subcontractors prior to the Effective Date or which are developed during the term by Contractor staff in performing work that is not for the Project and any modifications thereof and derivative works based therein, the Custom Software, and the documentation used to describe, maintain and use such Proprietary Software.

1.62 “RCW”: The Revised Code of Washington.

1.63 “Release”: A version of the System, described as such in Section 7.4.1 of the RFP and Response.

1.64 “Release 1 of SC-CMS”: The version of SC-CMS which will be revised after completing the Pilot Test of the Pilot Version of SC-CMS in the Pilot County, which will be implemented in each other County, and which will be subjected to further Acceptance Tests in each other County, as described in RFP Exhibit N, Section 4.5.

1.65 “Release 2 of SC-CMS”: A further upgraded version of the System, described as such in RFP Exhibit N, Section 3.5.

1.66 “Report(s)”: Documents provided by Contractor to AOC regarding Project activities, events and Services provided.

1.67 “Response”: Contractor’s response to the RFP dated, *[Month Date]*, 2012. *If applicable--* Also as amended under Contractor’s Best and Final Offer dated *[Month Date]*, 2013.

1.68 “Salting”: The placement of deliberate errors and omissions in the Software or a database.

1.69 “Schedule”: The dates described in the Work Plan for deadlines for performance of Services and other Project events and activities.

1.70 “Self-Help Code”: Any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee’s computer system(s) (e.g., remote access via modem) solely for purposes of Maintenance or technical support.

1.71 “Services”: The tasks and services to be performed by Contractor on the Project, as described in the Contract, including without limitation Project management, testing, production and delivery of the Deliverables, Training, Warranty Services, and Maintenance.

1.72 “Site(s)”: The location(s) for the AOC or Contractor Equipment and Software, as agreed to by AOC.

1.73 “Software”: The software for the System, as described in the Solicitation, Response, and APPENDIX A; Custom Software; the Configuration; all Enhancements thereto; Third-Party Software; and the Contractor Technology, all of the above in Source Code and Object Code formats. Embedded code, firmware, internal code, microcode, and any other term referring to software that is residing in the Equipment and that is necessary for the proper operation of the Equipment is not included in this definition of Software. Software includes all prior, current, and future versions of the Software and all Deficiency corrections.

1.74 “Source Code”: The series of instructions to the computer for carrying out the various tasks that are performed by a computer program, expressed in a programming language that is easily comprehensible to appropriately trained persons who translate such instructions into Executable Code which then directs the computer to perform its functions.

1.75 “Specifications”: The technical and other written specifications that define the requirements and Acceptance Criteria, as described in the RFP, the Response, subsequent Deliverables which have received Acceptance, the Performance Standards, and the Documentation. Such Specifications shall include and be in compliance with all applicable State and federal policies, laws, and regulations. The Specifications are, by this reference, made a part of this Contract, as though completely set forth herein.

1.76 “Staff”: Contractor’s employees, Subcontractors and agents who shall provide the Services on behalf of Contractor.

1.77 “State”: The State of Washington, including without limitation AOC and all of the State’s other agencies.

1.78 “Subcontractor”: A person, partnership, or company, not in the employment of or owned by Contractor, which is performing Services under this Contract under a separate agreement with or on behalf of Contractor.

1.79 “System”: The complete collection of all Software, integrated and functioning together with the Data in accordance with the applicable Specifications and on the Equipment. The System, in whole and in part, is considered a good under applicable provisions of the Uniform Commercial Code as promulgated in the State of Washington, for purposes of this Contract. The System is also referred to as SC-CMS in the RFP and in this Contract.

1.80 “System Testing”: Testing that is performed on the System (in whole or in part) by Contractor before beginning Acceptance Tests on the System and after Contractor has: completed installation of the Software; completed development of the Configurations and Custom Software; integrated the Software, including Third-Party Software, Custom Software, System Configurations, with the Data and Equipment as the System; pre-tested

the System for compliance with the applicable Specifications; and confirmed the readiness of the System for Acceptance Tests in accordance with the Contract.

1.81 “Third-Party Software”: Software and Third-Party Documentation which are: (a) developed by third parties; (b) generally distributed for commercial use; (c) not specifically designed or developed for AOC, including without limitation operating system software, tools, utilities, and commercial-off-the-shelf software; and (d) supplied by Contractor for use with the System pursuant to this Contract.

1.82 “Unauthorized Code”: Any virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or Data or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

1.83 “Uptime”: The time that the System is Operational, as measured 24 hours a day, Monday through Sunday, on a monthly basis, except for mutually agreed upon scheduled Maintenance activities. Uptime shall be as described in APPENDIX C.

1.84 “User(s)”: Parties who will have use of and access to the System.

1.85 “Warranty Period”: The 12-month period following Acceptance of each non-Software Deliverable and following Go-Live for each Software Deliverable, during which Contractor shall provide Warranty Services.

1.86 “Warranty Services”: The Services to be provided to AOC by Contractor during the Warranty Periods as described in Section 13.

1.87 “Work Plan”: The overall plan of activities for the Project, and the delineation of tasks, activities and events to be performed and Deliverables to be produced with regard to the Project, as submitted with the Response and as updated in accordance with Section 7.2 of this Contract. The Work Plan shall be incorporated herein as part of the Response, and each revised Work Plan shall be incorporated herein upon its Acceptance by AOC.

1.88 “Work Product”: Data and products produced under this Contract including but not limited to, Deliverables, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Configurations, Custom Software, Data and databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

2. Term. The term shall begin on the Effective Date and continue for five years for DDI and Maintenance Services, subject to earlier termination as provided in the Contract. In addition, AOC shall have the right to renew the term for up to five additional one year terms unless terminated in whole or in part by AOC upon receipt by Contractor of 60 Days' Notice prior to the end of each annual renewal term or as otherwise provided in the Contract.

3. Financial Matters.

3.1 Charges. Contractor shall have the right to issue an invoice for Services, and Deliverables, including but not limited to the System, following the Payment Events. Subject to AOC's receipt of a correct invoice, Contractor's performing its obligations as required in the Contract, and AOC's exercise of its remedies, AOC shall pay the Charges for the Services and Deliverables as described in APPENDIX A within 30 Days of receipt of such an invoice issued in accordance with the Contract.

3.2 Maximum Amount. The Maximum Amount payable under the terms of this Contract shall be as set forth in APPENDIX A.

3.3 Transportation and Insurance Charges. The costs associated with transportation, delivery and insurance for each Deliverable, if any, shall be paid for by Contractor.

3.4 Taxes. AOC shall pay any sales or use taxes imposed on the Services and/or Deliverables. Contractor must pay all other applicable taxes including, but not limited to, taxes based on Contractor's income or revenue or personal property taxes levied or assessed on Contractor's personal property to which AOC does not hold title.

3.5 Contractor Expenses. Contractor shall pay Contractor's out-of-pocket expenses incurred in connection with providing the Services and Deliverables and shall be responsible for payment of all expenses related to salaries, benefits, employment taxes, insurance, travel and per diem for its Staff.

3.6 Invoices. Contractor shall submit detailed, correct invoices in accordance with AOC's standard invoicing requirements or other procedures agreed to in writing by the parties to the AOC Project Director for all Charges and other amounts to be paid by AOC hereunder. Contractor shall submit properly prepared itemized invoices via email to AOC Financial Services at MSDFinancialServices@courts.wa.gov with a courtesy copy to the AOC Contract Administrator at the email address described in Section 23.9.1. Contractor shall submit invoices no more frequently than once a month. Contractor shall not submit an invoice for Payment Events until after their occurrence, except as provided in APPENDIX A. All invoices submitted must meet with the approval of AOC Project Director or her or his designee prior to payment. Contractor shall only submit invoices for Services or Deliverables as permitted by this Section 3.6 of the Contract. Incorrect or incomplete invoices will be returned by AOC to Contractor for correction and reissue. The Contract and purchase order number must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract. Invoices must reference this

Contract and provide detailed information and in a format as requested by AOC, including without limitation:

- a) This Contract name and reference number;
- b) An itemization of each Deliverable or Service provided for which payment is requested;
- c) Federal Tax Identification Number;
- d) Corresponding Acceptance date for each Deliverable;
- e) Cross reference to the approved Payment Schedule;
- f) Any other Project costs with a detailed, itemization of such costs, if applicable;
- g) Sales or use taxes, if applicable, and the calculation of legal and regulatory bases for any such taxes;
- h) Credits and liquidated damages, if any;
- i) Holdback amounts; and
- j) Total amount due.

3.7 Funding.

3.7.1 The parties acknowledge and agree that this Contract is dependent upon the availability of State funding. If funding to make payments in accordance with the provisions of this Contract is not forthcoming from the State for the Contract, or is not allocated or allotted to AOC by the State for this Contract for periodic payment in the current or any future fiscal period, then the obligations of AOC to make payments after the effective date of such non-allocation or non-funding, as provided in the notice, will cease and terminate as applicable.

3.7.2 If funding, to make payments in accordance with the provisions of this Contract, is delayed or is reduced from the State for the Contract, or is not allocated or allotted in full to AOC by the State for this Contract for periodic payment in the current or any future fiscal period, then the obligations of AOC to make payments will be delayed or be reduced accordingly or AOC shall have the right to terminate the Contract as provided in Section 22.6. If such funding is reduced, AOC in its sole discretion shall determine which aspects of the Contract shall proceed and which Services shall be performed, with Contractor's Charges for such Services and Deliverables determined in accordance with those in the Response. In these situations, AOC will pay Contractor for Services and Deliverables and certain of its costs in accordance with the terms of Section 22.6.3 and Section 22.8. Any obligation to pay by AOC will not extend beyond the end

of AOC's then-current funding period, except as otherwise provided in Section 22.6 and Section 22.8.

3.7.3 Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, AOC in the event that the necessary funding to pay under the terms of this Contract is not available, not allocated, not allotted, delayed or reduced.

3.8 Most Favored Customer. Contractor agrees all the prices, terms, rates, warranties, and benefits granted by Contractor are comparable to or better than the terms, prices, warranties and benefits, being offered by Contractor to any present customer meeting substantially similar qualifications or requirements as AOC. Except as otherwise herein provided, if Contractor shall, during the term of this Contract, enter into arrangements as a whole with any other substantially similar customer providing greater benefits or more favorable terms than as provided herein for provision of same or similar services as provided to AOC, Contractor shall be obligated to provide the same to AOC.

3.9 Overpayments to Contractor. Contractor shall promptly, but in all cases within 30 days, pay to AOC the full amount of any erroneous payment or overpayment upon Notice of an erroneous payment or overpayment to which Contractor is not entitled.

3.10 Advance Payments Prohibited. No advance payment shall be made for goods or Services furnished by Contractor pursuant to this Contract.

3.11 Credits. Any credits due AOC under this Contract may be applied against Contractor's invoices with appropriate information attached, upon giving of notice required herein, if any, by AOC to Contractor.

3.12 No Increases. Contractor shall not increase the Maximum Amount due from AOC under this Contract for all Services and Deliverables or other amounts during the term of this Contract as described in APPENDIX A, except pursuant to a written amendment to the Contract between the parties. If AOC fails to make timely payment, Contractor may invoice AOC one percent per month on the amount overdue or a minimum of \$1. Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within 30 Days of Acceptance of the System or receipt of Contractor's properly prepared invoice, whichever is later.

4. Contractor Project Management.

4.1 Overall Responsibility. Contractor shall have responsibility for managing the Project in accordance with the requirements of the Contract.

4.2 Reports and Meetings.

4.2.1 Contractor shall produce the Reports and the parties shall participate in the meetings described below and in Exhibit O, Section 1.2.1 of the RFP and Response in person, except that such meetings may be conducted by telephone conference call, videoconference, and/or web conference in AOC's sole discretion.

All Reports shall be produced in formats approved by AOC and delivered in accordance with the Schedule and the terms of this Contract.

4.2.2 The Contractor Project Manager and other Key Staff shall attend weekly status meetings with the AOC Project Manager and other members of AOC's Project team during the Project at times as mutually agreed upon in a Project management plan. These weekly status meetings shall follow a preset agenda jointly prepared by the Contractor Project Manager and AOC Project Manager, but will also allow both Contractor and AOC to discuss other issues that may concern either party.

4.2.3 Brief written status reports shall be provided by Contractor at least 24 hours prior to these weekly meetings. Status reports shall describe the previous week's activities, including Deficiencies encountered and their disposition, results of tests, whether or not deadlines were met, and any Deficiencies that may have arisen that need to be addressed before proceeding to the next activities. Also described will be the anticipated activities for the current week and any changes to project risks and risk mitigations. Contractor's proposed format and level of detail for the status Reports shall be subject to AOC's approval.

4.2.4 Contractor shall produce a monthly report summary that compares actual performance by Contractor of the Services (including but not limited to activities related to Deliverables) to budgeted Charges and dates in the Schedule. Contractor shall provide such monthly report summary for such Services to AOC.

4.2.5 As reasonably requested by AOC, the Contractor Project Manager shall assist the AOC Project Manager in preparing and shall prepare special Reports and presentations related to the Project management. The Contractor Project Manager shall also provide or produce such Reports or information as are reasonably requested by the AOC Project Manager regarding the Project.

4.2.6 Contractor senior management and Subcontractor senior management (in Contractor's discretion) shall meet on a calendar quarterly basis with executives of the AOC for the Contractor Project Manager to report on the status of the Project, progress in completing the Work Plan, issues and risks on the Project, and plans to resolve outstanding issues.

4.2.7 During the first Phase, the parties shall mutually agree upon when to hold meetings during Maintenance.

4.3 Contractor Project Manager.

4.3.1 Contractor shall assign to the Project a Contractor Project Manager of a management level sufficient to assure timely responses from all Contractor personnel and whose resume and qualifications will be reviewed and approved by AOC prior to his or her appointment as Contractor Project Manager. The approval process may include, at AOC's discretion, an interview with the proposed original or any replacement Contractor Project Manager. AOC will not unreasonably delay

or deny approval of the Contractor Project Manager. The Contractor Project Manager shall be responsible for acting as a liaison with the AOC Project Manager.

4.3.2 Contractor represents and warrants that the Contractor Project Manager shall be fully qualified to perform the tasks required of that position under this Contract. The Contractor Project Manager shall function as Contractor's authorized representative for all management and administrative matters not inconsistent with the provisions contained herein. The Contractor Project Manager shall be able to make binding decisions pursuant to this Contract and approve Change Orders for Contractor. The Contractor Project Manager or other substitute Project management personnel for Contractor shall be at the Site full-time during the DDI Services.

4.3.3 The Contractor Project Manager shall not be changed from the person proposed in the Response except as provided in this Contract. If the Contractor Project Manager is removed or replaced, Contractor will promptly (but in no event more than ten Days) provide Notice to AOC, submit a resume, and obtain approval of the replacement Contractor Project Manager from AOC, prior to his or her beginning work on the Project. Contractor shall temporarily fill the Contractor Project Manager within seven Days of it being vacated and shall fill the position with a permanent fulltime replacement within 45 Days of the Contractor Project Manager's removal or departure.

4.3.4 Any written commitment by the Contractor Project Manager and persons designated by him or her in writing for this purpose, within the scope of this Contract, shall be binding upon Contractor.

4.4 Contractor Staff.

4.4.1 Prior to the Effective Date, Contractor shall have provided to AOC an organization chart of Contractor's Staff, including names of Key Staff for the Project and positions during Maintenance. Contractor shall also provide to AOC job descriptions for Key Staff positions.

4.4.2 Except in the case of a legally required leave of absence, sickness, death, termination of employment or unpaid leave of absence, Key Staff shall not be changed during the Project from the people who were described in the Response and during Maintenance without the prior written approval of AOC until completion of their assigned tasks, as described in the Work Plan or the end of the Warranty Period for the System if such tasks are not so described in the Work Plan. During the term of the Contract, AOC reserves the right to approve or disapprove Contractor's and any Subcontractor's Key Staff assigned to this Contract, to approve or disapprove any proposed changes in Key Staff, or to require the removal or reassignment of any Contractor or Subcontractor Staff found unacceptable by AOC subject to AOC's compliance with applicable laws. Contractor shall provide AOC with a resume of any member of its Key Staff or a

Subcontractor's Key Staff assigned to or proposed to be assigned to any aspect of the performance of this Contract prior to commencing any Services.

4.4.3 All Staff proposed by Contractor as replacements for other Staff shall have comparable or greater skills for performing the activities as performed by the Staff being replaced.

4.4.4 Contractor assumes sole and full responsibility for its acts and the acts of its personnel. Contractor shall ensure that any transition to new Staff will not affect the Schedule or provision of Services set forth in this Contract. Contractor understands and agrees that AOC does not assume liability for the actions of Contractor's Subcontractors or agents. Contractor agrees that it has no right to indemnification or contribution from AOC for any judgments rendered against Contractor, its Subcontractors or agents.

4.4.5 Contractor agrees that any claim on behalf of any person arising out of employment or alleged employment by Contractor (including, but not limited to, claims of discrimination against Contractor, its officers, or its agents) are the sole responsibility of Contractor and are not the responsibility of AOC. Contractor will indemnify and hold AOC harmless from any and all such claims asserted against AOC. Any person who alleges a claim arising out of employment or alleged employment by Contractor will not be entitled to any compensation, rights, or benefits from AOC (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

4.5 AOC Project Manager. The Contractor Project Manager's primary point of contact in matters of Project management shall be the AOC Project Manager. The AOC Project Manager or his or her designee or successor will manage this Contract on behalf of AOC and will be the principal point of contact for the Contractor concerning Contractor's performance under this Contract.

4.6 Reference and Background Checks. Due to the confidential nature of the information and materials which will be accessible to Contractor, AOC shall have the right to conduct reference checks and background checks on Contractor Staff to be used to provide the Services. AOC reserves the right in its sole discretion to reject any proposed Staff as a result of information produced by such reference checks or additional sources of information. Contractor agrees that, as a requirement of this Contract, Contractor, and any employee, assistant, agent, or Subcontractor of Contractor completing work under this Contract, may be required to provide results of a criminal background investigation. Such an investigation may include, but not be limited to, fingerprinting and criminal history records checks. Contractor further agrees to cooperate fully with AOC in completion of this requirement. Results of the investigation and/or failure of Contractor to cooperate fully may be grounds for termination of this Contract.

4.7 Employment of State Personnel. Contractor shall not knowingly hire on a full-time, part-time, or other basis during the period of this Contract any managerial,

professional or technical personnel of AOC that are or have been at any time during the term of this Contract in the employ of AOC, except regularly retired employees, without the written consent of AOC. Further, Contractor shall not knowingly engage on this Contract on a full-time, part-time, or other basis during the period of this Contract any retired employee who has not been retired for at least one year, without the prior written consent of AOC.

4.8 Records Retention and Access Requirements.

4.8.1 Contractor shall agree to the conditions of all applicable AOC, State and federal regulations, which are incorporated herein by this reference, regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, and other records of this Contract. In addition, Contractor shall agree to the following terms regarding retention of records and access for AOC, State and federal government officials.

4.8.2 Contractor and its Subcontractors shall maintain books, records, documents and other evidence which sufficiently and properly reflects the accuracy of amounts billed to AOC during the performance of this Contract and shall retain all such records for six years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for one year following the termination of litigation, including all appeals if the litigation has not terminated within six years from the date of expiration or termination of this Contract.

4.8.3 All such records shall be subject at reasonable times and upon prior Notice to examination, inspection, copying, or audit by personnel so authorized by the Project Director and/or AOC, State and federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Contract, access to these items will be provided within Thurston County. During the six year period after this Contract term or one year term following litigation, delivery of and access to these items will be at no cost to AOC. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.

4.8.4 The records retention and review requirements of this Section shall be included by Contractor in any of its subcontracts with Subcontractors. AOC's personnel shall be accompanied by Contractor personnel at all times during any examination, inspection, review or audit. Contractor shall make no charges for services rendered in connection with an audit requested by AOC.

4.8.5 It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Contractor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from AOC's review unless the cost or any other material matter under this Contract is calculated or derived from these factors.

4.8.6 Contractor shall provide right of access to its facilities to AOC, or any of AOC's officers or to any other authorized agent or official of the State of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance and/or quality assurance under this Contract.

4.8.7 As part of the Services, Contractor shall provide, upon AOC's request, a copy of those portions of Contractor's and its Subcontractors' internal audit reports relating to the Services provided to AOC under this Contract.

4.8.8 Contractor shall undergo an annual SSAE No. 16 or successor audit throughout the term. If any relevant exceptions are noted, Contractor shall correct those exceptions in a timely manner. Contractor shall provide a copy of the most recent such review or audit within 60 Days of its completion and Contractor's then current review or audit on the Effective Date.

4.9 Accounting Requirements. Contractor shall establish and maintain an accounting system with procedures and practices in accordance with generally accepted accounting principles. The accounting system shall maintain records pertaining to the Services and all other costs and expenditures made under this Contract, and the costs properly applicable to the Contract shall be readily ascertainable therefrom.

4.10 Supplemental Contracts. AOC may undertake or award supplemental contracts for work related to this Contract, or any portion thereof. Contractor shall cooperate with such other contractors and AOC in all such cases. Contractor shall ensure that all Subcontractors shall abide by this provision. It is understood and agreed by the parties hereto that Contractor shall not be responsible for the acts or failures to act of any such other contractors or for any delays which may be caused by any such other contractors, except that Contractor shall be responsible for delays of, or acts or failures to act of, such other contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of Contractor.

5. Services and Resources.

5.1 Performance. Contractor shall begin to perform the Services on the Effective Date. Contractor shall perform the Services as described in this Contract in accordance with the Work Plan and to achieve the objectives described in this Contract.

5.2 Necessary Resources. AOC shall provide Property and other resources and personnel as described in the RFP, if any. Contractor shall provide, as part of the Project budget, the personnel and all other materials and resources necessary for the performance of the Services. Contractor shall ensure that its representatives have the hardware and software necessary to complete the engagement as identified in the Contract. AOC will not supply hardware or software to Contractor unless specifically agreed to in writing. Charges shall be reduced to the extent that AOC performs obligations which are described in the Contract as being performed by Contractor in accordance with Section 15.

5.3 Ownership. Title to all Property furnished by AOC shall remain in AOC. Title to all Property provided by Contractor shall pass to and vest in AOC upon Acceptance of the applicable Deliverable or delivery of the other type of Property, unless otherwise provided in the Contract.

5.4 Use of Property. Any Property furnished to Contractor shall, unless otherwise provided herein, or approved in writing by the AOC Project Manager, be used only for the performance of its obligations under and subject to the terms of this Contract.

5.5 Damage to Property. Contractor shall protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by Contractor's acts or omissions or from the failure on the part of Contractor to maintain and administer that Property in accordance with the terms of the Contract. Notwithstanding anything to the contrary herein, Contractor shall be liable to AOC for any damages resulting from damage to Property, which damages result from or are caused by Contractor's acts or omissions. Contractor shall ensure that the Property is returned to AOC in like condition to that in which it was furnished to Contractor, reasonable wear and tear excepted. Contractor shall repair or make good any such damage, destruction or loss at any AOC Site, and shall do so without requesting contribution from AOC.

5.6 Notice of Damage. Upon the loss of, destruction of, or damage to any of the Property, Contractor shall notify the AOC Project Manager thereof and shall take all reasonable steps to protect that Property from further damage.

5.7 Surrender of Property. Contractor shall surrender to AOC all Property upon the earliest of completion, termination, or cancellation of this Contract.

5.8 AOC Property and Facility. AOC will provide Contractor access to and use of the AOC Equipment as described in the RFP. Contractor's use of the AOC Equipment shall be subject to AOC's security, administrative and other requirements. AOC may provide workstations and facilities for the Staff. AOC shall have the right to unilaterally terminate Contractor's workstation assignment at any time. AOC will charge Contractor a fee of \$887.00 for the first month and \$395.00 per month thereafter to cover costs for the workstations or facilities assigned to Contractor. This amount shall be invoiced to Contractor on a monthly basis as a credit against invoiced charges to AOC. If Contractor fails to credit or pay a monthly workstation and facility fee to AOC, the parties specifically agree that AOC shall have the right to deduct the fee from the invoiced amount and authorize the corrected invoice for payment or take other action deemed appropriate. If Contractor has performed no billable work during a month, Contractor shall pay AOC the workstation fee, or with approval of the AOC Project Manager, arrange for an alternate payment method. The workstation and facility fee shall be prorated for the first and last month of use as follows: for the number of workstations used by Contractor multiplied by the number of days of use. The result of this will be divided by the number of days in the month; this will equal the prorated charge for that month. Parking in the AOC employee parking lots is strictly prohibited. Parking may be arranged with the motel directly across from AOC headquarters. As an alternative to the facility and workstation fees, Contractor may lease a facility to house its Project Staff. Payments and all other

conditions regarding the lease shall be the sole responsibility of Contractor. If Contractor selects the leased facility option, the locality of the leased facility must be located in either Lacey or Olympia within the State of Washington.

6. Equipment.

6.1 Contractor Equipment. The parties acknowledge and agree that Contractor shall provide Equipment at Contractor's Site(s) in accordance with the Work Plan and as described in the Response. If Contractor Equipment which is located at a State Site is damaged as a result of an event under Section 23.14 (Force Majeure), Contractor shall replace such Equipment and shall install such Equipment in the new or temporary Site designated by AOC, at Contractor's cost. However, AOC shall be responsible for providing connectivity of such Equipment to telecommunications facilities for which AOC is responsible.

6.2 AOC Equipment. AOC shall provide desktop Equipment at AOC's Sites. If applicable, Contractor shall install Software on AOC's Equipment as indicated in the Work Plan.

6.3 Equipment and Third-Party Software Ordering and Delivery.

6.3.1 AOC may order Equipment and Third-Party Software from Contractor. Contractor shall be responsible for tracking and reporting on a monthly basis to AOC on each item of Equipment and Third-Party Software which has been purchased throughout the Project. Information to be contained in each report shall be mutually agreed upon by the parties.

6.3.2 Contractor will ship the Equipment and Third-Party Software to Contractor or AOC, as agreed upon by the parties in the applicable Change Order, Work Plan, and this Contract. If Contractor receives the Equipment and Third-Party Software, Contractor will load the Third-Party Software and other Software on the Equipment, and Contractor will pre-test each such item of Equipment and confirm that it operates in accordance with applicable Specifications before it is shipped to AOC's Site. Following such confirmation, Contractor will ship the Equipment with the applicable Software to the Site(s) agreed to by the parties in writing.

6.3.3 Contractor shall deliver the Equipment and Software ordered pursuant to this Contract on the dates specified in the Change Order and its Work Plan. For any exception to these delivery dates, Contractor must notify AOC and obtain prior approval in writing.

6.3.4 All Equipment and Software deliveries made pursuant to this Contract must be complete. AOC shall inspect and provide written acknowledgement of Acceptance or rejection of installation of the Equipment after receipt of a Notice from Contractor that installation has been completed within such other period of time as the parties agree in writing. Any such item of Equipment shall be deemed incomplete and undeliverable if any item of Equipment or Software, component, or feature thereof within the ordered configuration has not been delivered, or, if

delivered, not installed in accordance with its Specifications and the Change Order and its Work Plan. All packages must be accompanied by a packing slip which identifies all items included with the shipment and AOC's Change Order number. Contractor's delivery receipt must be signed by an authorized representative of AOC for all deliveries made hereunder.

6.4 Loss or Damage.

6.4.1 Contractor shall ship all Equipment and Software purchased and licensed pursuant to this Contract, FOB AOC's designated destination. The method of shipment shall be consistent with the nature of the Equipment and Software and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Equipment and Software, in whole or in part, ordered hereunder which occurs prior to installation completion, except loss or damage attributable to AOC's acts or omissions or a force majeure event under Section 23.14 (Force Majeure); and such loss, damage, or destruction shall not release Contractor from any obligation hereunder.

6.4.2 After installation completion, the risk of loss or damage for the Equipment shall be borne by AOC, except loss or damage which results from or is caused by Contractor.

6.5 AOC Equipment.

6.5.1 Installation for all Equipment and Software will occur as described in the applicable Change Order and the Work Plan. Any Equipment and Software installations done by Contractor shall be conducted by experienced and trained Staff, and shall not invalidate or void any manufacturers' warranties. Contractor will be responsible for safety conditions in the areas of work performance that it controls.

6.5.2 Contractor shall conduct its installation Services so as to minimize interference with normal activities of AOC and shall keep the Site(s) safe, clean and orderly at all times. Contractor will restore the Site(s) to a condition no less finished than prior to the initiation of the Equipment's installation. Upon completion of installation, Contractor will leave the Site(s) clean and free from all of its materials, tools, and equipment not required after installation and from all rubbish and debris which result from installation.

6.5.3 Contractor shall provide confirmation that each item of Equipment conforms to its applicable Specifications following completion of installation by Contractor as required in this Contract. Contractor agrees that AOC shall have the right to confirm that the Equipment conforms to applicable Specifications following receipt of such confirmation. Contractor shall correct any failures of the Equipment to meet applicable Specifications following receipt of Notice from AOC.

6.6 Connections to Equipment. If requested by AOC, Contractor agrees to identify, on all items of Equipment, components, or features thereof supplied under this Contract, all appropriate test points for connecting commercially available Equipment monitors designed to measure system capacity, performance, or activity.

6.7 Access to Sites.

6.7.1 Contractor shall have access to AOC's Sites in accordance with applicable Change Orders and the Work Plan to provide Services described in this Section, subject to the administrative and security regulations existing at the Site(s), and such other security regulations as are required because of the nature of the System or a Site. AOC shall cause AOC's Sites to be available and ready on the dates specified in the applicable Change Order and its Work Plan for Equipment deliveries and installations in accordance with written site and environmental Specifications agreed to by the parties, as set forth in the applicable Change Order.

6.7.2 Any subsequent alterations or modifications to a AOC Site which is directly attributable to incomplete or erroneous specifications provided by Contractor and which involve additional expense shall be made at the expense of Contractor, to the extent that such costs would not have been incurred had the complete and/or correct specifications been initially provided.

6.7.3 If AOC Sites change during the term, the parties shall use the Change Order process for AOC to describe Specifications for the Equipment and responsibilities for scheduling and implementing installations, removing components, and other tasks.

6.8 Documentation. Contractor shall, upon commencement of performance, provide to AOC such current diagrams, schematics, manuals, and other Documentation necessary for the operation of the Equipment by AOC or a third party. There shall be no additional charge for such Documentation.

6.9 Notice of Damage. Upon the loss of, destruction of, or damage to any Equipment under this Section, of AOC, Contractor shall notify the AOC Project Director thereof and, subject to direction from the AOC Project Director or her or his designee, shall take all reasonable steps to protect that Equipment from further damage.

6.10 Additions. AOC may add items of Equipment and Software to the System in accordance with the Change Order or other ordering procedures and standard configurations for Equipment and Third-Party Software agreed to in writing by the parties. Such additions shall work with the Systems in accordance with the Specifications and shall be subject to all of the terms and conditions of this Contract.

6.11 Changes or Cancellations. AOC may change or cancel items of Equipment and Software prior to shipment. If AOC issues a Change Order or other mutually agreed upon form causing a delivery delay or cancels an order less than 20 Days prior to scheduled shipment, AOC may be subject to a restocking charge, provided that imposing such charges is part of Contractor's existing policies. Such charges would be equal to

Contractor's actual costs of restocking, which shall in any case be no greater than five percent of the Charges for the Equipment being delayed or cancelled.

6.12 AOC Codes. Contractor shall comply with all required Federal, State and local codes, inspection standards and ordinances which apply while performing installation Services and which exist at the time of the applicable installation. In the event that Contractor is not performing in compliance with such required codes, inspection standards and ordinances, Contractor shall remedy such noncompliance at no charge to AOC.

7. Deliverables.

7.1 General.

7.1.1 Contractor shall provide AOC with the Deliverables according to the Work Plan, as mutually agreed upon in writing during Maintenance, and as described in the RFP, the Response, and this Contract. Contractor shall utilize the Specifications, the Work Plan, the RFP, the Response, the Deliverables for which AOC has previously granted Acceptance, Contractor's professional knowledge, and this Contract as the basis of subsequent Deliverables. Contractor shall retain backup copies in writing and on electronic media of all Deliverables until 180 Days after termination or expiration of this Contract and shall provide AOC on its request with a copy thereof until that time.

7.1.2 All Deliverables shall be subject to AOC's Acceptance, including without limitation Deliverables provided pursuant to Change Orders. AOC's review of Deliverables shall be in accordance with the time frames therefor set forth in the Work Plan.

7.2 Work Plan.

7.2.1 The Work Plan will initially be included in the Response. Contractor shall produce and provide to AOC an update to the Work Plan as a Deliverable with input from AOC within 21 Days of the Effective Date. The Work Plan shall provide detailed information, in a Microsoft Project (Version 2000 or later) document as described in RFP Section 2.11, including but not limited to tasks, Deliverables, Schedule, task dependencies, identification of resource requirements, and Payment Schedule. The Work Plan shall be inclusive of the mutual expectations and work to be performed by AOC and Contractor in order to complete the Project successfully. In the event of failure of the parties to agree upon the update to the Work Plan and/or of AOC to give its Acceptance thereof within 45 Days of the Effective Date, AOC may invoke its right to immediately terminate this Contract, and, in AOC's discretion, pursue negotiations with an alternative vendor.

7.2.2 The Schedule shall not change as a result of time required by Contractor to correct Deficiencies, unless otherwise agreed beforehand in writing by AOC. However, the Schedule may, in AOC's discretion, be extended on a day-to-day basis to the extent that AOC's review of a Deliverable and review of corrections of

Deficiencies in accordance with the Acceptance process and Acceptance Test Plan is longer than described in the Schedule.

7.2.3 Contractor shall update the Work Plan regularly (no less than monthly) and as otherwise necessary throughout the Project to accurately reflect the status of activities, tasks, events, Services for the Project, and projected Schedule therefor. Contractor will present the updated Work Plan at a time agreed to by the parties in writing, and the updated Work Plan will highlight changes made from the prior Work Plan. Any such update changes must be approved in writing by the AOC Project Director prior to their final incorporation into the Work Plan. Any Work Plan change request which would result in an increased cost to AOC shall be considered a Change Order under Section 15. Any Work Plan change that would require an amendment to this Contract shall be approved by the AOC Project Director. The Work Plan progress updates shall allow adequate time, in AOC's reasonable judgment, for AOC to review and comment on the updates, as well as any new or modified Deliverables described in APPENDIX A, and revision or correction of Deliverables described in APPENDIX A by Contractor. However, unless otherwise specifically agreed to in writing, AOC's agreement on a change to the Work Plan will not relieve Contractor of liability from failures to perform its obligations as required herein. The Work Plan updates shall be incorporated into the Contract upon Acceptance by AOC.

7.3 Acceptance Process for Deliverables.

7.3.1 The Deliverables are described in APPENDIX A and shall include, without limitation, plans, designs, other non-Software Deliverables, Functions or other combinations of Software, and the System. Contractor must give Confirmation for each Deliverable. Upon delivery of a Deliverable and receipt of Confirmation from Contractor that the Deliverable meets its Specifications, AOC will, with Contractor's assistance and in accordance with the Work Plan, promptly review or perform Acceptance Tests on the Deliverable, as applicable, to determine whether the Deliverable conforms to its Acceptance Criteria.

7.3.2 AOC will provide Acceptance for a Deliverable if it has no Deficiencies (except for Cosmetic Deficiencies). However, if a Deficiency (other than a Cosmetic Deficiency) is found, AOC will notify Contractor in an email to the Contractor Project Manager or other document of Deficiencies used as the grounds for AOC's decision not to give Acceptance. Contractor shall correct Deficiencies and resubmit a corrected Deliverable to AOC which will review or perform Acceptance Tests on the Deliverable to verify whether the Deliverable lacks Deficiencies (except for Cosmetic Deficiencies) and in writing shall either give its Acceptance or reject it following such review or Acceptance Tests. Contractor's times for correcting Deficiencies and AOC's review of Deliverables shall be in accordance with the timeframes therefor set in the Work Plan. If time periods for correcting Deficiencies by Contractor and reviewing and retesting corrected Deliverables are not in the Work Plan, each such time period shall be ten business days.

7.3.3 If Contractor is unable to correct all Deficiencies (except for Cosmetic Deficiencies) within the number of days indicated in the Work Plan following the Deliverable's scheduled Acceptance date, or if no such date is in the Work Plan, within 60 days from such scheduled Acceptance date, AOC may, at its option: (a) continue reviewing or performing Acceptance Tests on the Deliverable and require Contractor to continue until Deficiencies (except for Cosmetic Deficiencies) are corrected or eliminated; (b) request Contractor to provide, at its expense, a replacement Deliverable for further review or Acceptance Tests; (b) request Contractor to provide, at its expense, a replacement Deliverable for further review or Acceptance Tests; (c) set-off from the Charges to the extent AOC determines the Deficiencies for the Deliverable have not been corrected and provide Acceptance for the Deliverable; or (d) after completion of the process set forth in this Section 7.3 and providing Notice of default to Contractor, terminate this Contract in whole or in part as described in Section 22.2.

7.4 Acceptance Tests for the System

7.4.1 The terms of Section 7.3 shall apply to each of the following Software Deliverables in the following order:

7.4.1.1 The Pilot Version of SC-CMS which will be subjected to Acceptance Tests in a test environment by AOC before the Pilot Tests;

7.4.1.2 The Pilot Version of SC-CMS in the Pilot County which will have been revised and upgraded as a result of the Acceptance Tests in a test environment and which be subjected to the Pilot Test, which will be further Acceptance Tests in the Pilot County;

7.4.1.3 Release 1 of SC-CMS which will have been revised and upgraded as a result of the Pilot Test and a period of operations in the Pilot County, which will be implemented in each other County and which will be subjected to Acceptance Tests in each other County;

7.4.1.4 Release 2 of SC-CMS which will have been revised and upgraded with new Functions during the Project, which will be subjected to Acceptance Tests in a test environment by AOC; and

7.4.1.5 Release 2 of SC-CMS which will be implemented in each County and which will be subjected to Acceptance Tests in each County.

7.4.2 If AOC gives Acceptance of each of the Pilot Version of SC-CMS, the Pilot Version of SC-CMS in the Pilot County, Release 1 of SC-CMS which is implemented in each other County, and Release 2 of SC-CMS which is implemented in each, AOC shall, with input from Contractor, determine whether each such Software Deliverable is ready to Go Live for AOC. When AOC decides to Go Live for each such Software Deliverable, AOC will put that Software

Deliverable into Production and Contractor shall provide Implementation Services for AOC and the Courts in each County as described in RFP Exhibit N Section 4.

7.5 Source Code.

7.5.1 Contractor shall provide AOC with a copy of the Source Code and updated associated technical documentation for the Custom Software and for the Application Software which is licensed by Contractor to AOC in Source Code form: (i) upon Acceptance of the System; (ii) when Contractor delivers an Enhancement to the System during the term of this Contract; (iii) as described in the Work Plan; and (iv) at other times during the Project and Maintenance as requested by AOC. Contractor shall provide such Source Code and Documentation at no additional cost on magnetic media in a format acceptable to AOC.

7.5.2 Contractor shall also use the terms of APPENDIX D to allow AOC to obtain access to other Application Software Source Code, which is not available from Contractor for Implementation, under conditions described in APPENDIX D. At its option and expense, AOC may request that the completeness and accuracy of any such Application Software Source Code and/or associated technical documentation be verified. Such verification will be conducted by the escrow agent or, upon at least ten business days' prior notice to Contractor, a representative of AOC, after full disclosure to Contractor of information reasonably requested by Contractor about such representative. Unless otherwise agreed in writing by Contractor and AOC, verification will be performed on-site at Contractor's premises, utilizing Contractor's equipment and software, at a time reasonably acceptable to Contractor. Contractor shall make technical and support personnel available as reasonably necessary for the verification. In the event the Application Software Source Code and/or associated technical Documentation in escrow is not accurate or complete, Contractor shall promptly correct such inaccuracies or incomplete escrow, but in all cases within 10 Days.

7.6 Protection From Damage. Contractor shall continuously protect all Deliverables and backups therefor prior to their Acceptance and while in Contractor's possession or control from damage, destruction or loss resulting from or caused by the acts or omissions of Contractor in connection with the Services. Contractor shall ship all Deliverables purchased pursuant to this Contract, FOB AOC's destination. The method of shipment shall be consistent with the nature of the goods and hazards of transportation. During the period Deliverables are in transit and in possession of Contractor, its carriers or AOC prior to their Acceptance, Contractor and its insurers, if any, shall relieve AOC of responsibility for all risks of loss or damage thereto, unless such loss or damage are caused by the negligence or misconduct of AOC. After AOC provides Acceptance for a Deliverable, the risk of loss or damage shall be borne by AOC, except loss or damage attributable to Contractor's acts or omissions.

7.7 Delivery. Contractor shall deliver the Deliverables pursuant to this Contract on or before the applicable Delivery Dates in the Work Plan. All such deliveries made pursuant

to this Contract must be complete. Contractor shall deliver hard copy and electronic versions of the Deliverables in formats agreed to by the parties. All packages must be accompanied by a packing slip which identifies all items included with the shipment and AOC's purchase order number. Contractor's delivery receipt must be signed by an authorized representative of AOC for all deliveries made hereunder.

7.8 Interpretation of Deliverables. In the event of a contradiction, conflict, ambiguity or inconsistency in or between Deliverables and other documents comprising this Contract, including without limitation, a Deliverable that has already received Acceptance, the RFP and the Response, any such contradiction, conflict, ambiguity or inconsistency shall be resolved in favor of the latest AOC-approved Deliverable except in the case where a previous documented requirement is inadvertently omitted or not addressed directly in a subsequent Deliverable. No requirements can be omitted from the Specifications without the written consent of the AOC Project Manager.

7.9 Representation. By submitting a Deliverable, Contractor represents that, to the best of its knowledge, it has performed the associated tasks in a manner that will, in concert with other tasks, meet the Specifications and objectives stated or referred to in this Contract. By unconditionally giving Acceptance for a Deliverable, AOC represents only that it has reviewed the Deliverable and detected no Deficiencies of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding of Acceptance for the work completed.

7.10 Knowledge Transfer. While constructing and developing the Deliverables, including without limitation for DDI and Maintenance of Software, Contractor shall demonstrate and provide information to staff designated by AOC about the functions and operations of all such Software in accordance with the Specifications and the Work Plan.

8. Licenses to Software and Documentation.

8.1 Application Software and Documentation Licenses

8.1.1 Grants. Contractor hereby grants to AOC for AOC's internal purposes and for Processing data for other State agencies and other State tax-supported entities: (a) a nonexclusive, perpetual, non-terminable, irrevocable license to use, demonstrate, modify, prepare derivative works based on, and reproduce the Contractor Technology; (b) a nonexclusive, perpetual license to use, demonstrate, modify, prepare derivative works based on and reproduce Third-Party Software, which Contractor provides to AOC in Source Code format or which AOC receives in whole or in part under APPENDIX D; and (c) a nonexclusive, perpetual, license to use and reproduce the Third-Party Software, which Contractor provides to AOC in Executable Code format.

8.1.2 Term. The licenses hereunder are granted as of the Delivery Date of the Contractor Technology and Third-Party Software and continue until AOC returns the Contractor Technology and Third-Party Software and copies thereof to Contractor or erases such Software from its Equipment's storage media. However,

AOC will have the right to retain a copy of any such Software for archival purposes.

8.1.3 Title. Contractor and its suppliers hold all right, title and interest in the Contractor Technology and Third-Party Software.

8.1.4 Documentation. Contractor shall provide two sets of Documentation for use in electronic format compatible with Microsoft Corporation's then-generally available Office products and written format in accordance with the terms of this Contract. Upgrades and revisions to this Documentation shall be provided while Contractor is providing Services therefor. There shall be no additional charge for the Documentation or updates thereto, in whatever form provided. Contractor's Documentation shall be comprehensive, well structured, and indexed for easy reference. If Contractor maintains its technical, maintenance and installation documentation on a web site, Contractor may fulfill the obligations set forth in this Section by providing AOC access to its web-based Documentation information. Contractor may also provide such information on CD-ROM. Contractor grants AOC a nonexclusive, perpetual, nonterminable, irrevocable right to use, make derivative works based upon, modify, and reproduce the Documentation furnished pursuant to this Section at no additional charge.

8.1.5 Copies. AOC will reproduce and include the copyright and other proprietary notices and product identifications provided by Contractor on such copies, in whole or in part, or on any form of the Application Software and its Documentation. AOC will maintain records of all copies it makes of the Proprietary Software.

8.1.6 Restrictions. Except as otherwise permitted in this Contract, AOC agrees not to: otherwise copy, display, transfer, adapt, modify, reverse engineer, decompile, disassemble, or distribute to any third party or lease the Third-Party Software or any copy of it which is provided in Executable Code format.

8.1.7 Third-Party Software Licenses. Prior to utilizing any Third-Party Software product that may be included as part of a Software Deliverable to AOC and that will require AOC to execute a license agreement from the licensor upon expiration or termination of the Contract, Contractor shall provide to AOC copies of any applicable license agreement from the licensor of the Third-Party Software to allow AOC to pre-approve such license agreement. Contractor shall assign to AOC applicable licenses for the Third-Party Software upon expiration or termination of the Contract.

8.1.8 Versions. Unless otherwise mutually agreed to in writing, Contractor shall, during the Project, maintain any and all Third-Party Software products at their most current version or no more than one version back from the most current version and no additional charge, provided that such Third-Party Software version upgrades can be installed and maintained with the Staff proposed in the Response for the Maintenance Services. However, Contractor shall not maintain any Third-Party Software versions, including one version back, if any such version would prevent AOC from using any functions, in whole or in part, or would cause

Deficiencies in the System. If implementation of an upgrade to a Third-Party Software product requires personnel in addition to the Staff proposed in the Response for the Maintenance Services, AOC and Contractor shall discuss whether to implement such an upgrade and, if mutually agreed upon in writing, the additional Charges, if any, to be paid by AOC for such upgrade. Any additional costs that are charged by a Third-Party Software manufacturer for an upgrade to a Third-Party Software product shall be charged to and paid for by Contractor.

8.2 Replacement Equipment. AOC shall be entitled to exercise its rights to Application Software on the Equipment or any replacement equipment used by AOC, and with any replacement Third-Party Software chosen by AOC without payment of additional Charges or other amounts.

9. AOC Ownership. AOC shall own all right, title and interest in and to its Confidential Information, AOC's intellectual property, the AOC Equipment, the Work Products, the Data, and the other Deliverables (except for the Application Software and other Contractor Technology, which for the purposes of this Section of the Contract shall not be owned by AOC), including without limitation the Specifications and the Documentation. Ownership of the Deliverables shall transfer to AOC upon their Acceptance and of the other Work Products upon their Delivery Dates. Contractor hereby assigns, all rights in the Work Products to AOC. Contractor shall, at the expense of AOC, assist AOC or its nominees to obtain copyrights, trademarks, or patents for all such works in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to AOC right, title and interest in and to such works. Contractor shall provide all assistance reasonably requested by AOC in the establishment, preservation, and enforcement of its rights in such Work Products, without any additional compensation to Contractor. Contractor agrees to and hereby, to the extent permissible, waives all legal and equitable rights relating to the Work Products, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications.

10. Implementation.

10.1 Implementation. Contractor shall complete each Implementation according to Exhibit N of the RFP and Response, the Work Plan and this Contract.

10.2 Conversion. Contractor shall participate in and perform Services for Conversion as described in Exhibit N of the RFP and Response and with the Work Plan.

10.3 Training. Contractor shall provide User and technical Training Services in accordance with Exhibit N of the RFP and Response and in accordance with the Work Plan.

11. Court Purchases.

11.1 Court Requests.

11.1.1 The parties acknowledge that AOC expects Contractor to make available for purchase by Courts additional equipment, software and services that are related to the Equipment, Software and Services being provided to AOC. In order to allow such Courts to make such purchases, AOC will have separate interagency agreements with such Courts to allow the Courts to utilize the following provisions of this Contract. Each Court may ask Contractor, pursuant to a separate process, to perform services or to provide equipment and software that are related to the Software under the Court purchase process described in this Contract and Sections 6.5 and 6.6 of the RFP and Response.

11.1.2 Each Court shall pay Contractor for such Services, Equipment and Software in accordance with such Court purchase process and other processes agreed to in writing between AOC and Contractor.

11.1.3 Contractor will also apprise AOC of Services, Equipment or Software which Contractor plans to provide to an individual Court if it could impact the Services or System under this Contract.

11.1.4 The Court will execute a purchase document for such services, Equipment and Software.

11.1.5 Following execution of the Court purchase document, AOC shall amend the Contract, subject to approval of AOC Board of such amendment. In the event of a conflict or inconsistency between the terms and conditions of a purchase document and this Contract, the terms and conditions of the Contract shall control to the extent of the conflict or inconsistency.

11.2 Notice to AOC of System Software Changes. If Contractor discovers or is apprised by a Court that services for a Court will impact or require changes to AOC's Software, Contractor will promptly notify the affected Courts and AOC.

12. Warranties.

12.1 Deliverables.

12.1.1 Contractor represents and warrants that each Deliverable, including without limitation the System, in whole and in part, and all Enhancements, shall meet its Specifications as provided herein following its Acceptance and during the Warranty Period. Contractor shall immediately repair or replace each of the Deliverables that does not meet its Specifications as provided herein at no additional charge to AOC during the Warranty Period. If a Deliverable includes any products provided by third parties, such as Equipment or Third-Party Software, Contractor shall fully cooperate with and coordinate the work with such third parties and AOC to promptly repair and replace the Deliverables at no additional charge.

12.1.2 Contractor also represents that it has and warrants that it shall have the capability and capacity to produce the Deliverables it has agreed to provide to

AOC, that it shall secure all Software licenses necessary to provide the Deliverables in accordance with the terms of the Contract, and that each Deliverable will be implemented into Production and supported by Contractor to meet the requirements in the Contract. If additional Software licenses or Deliverables, including but not limited to Enhancements, are needed to Third-Party Software for Contractor to meet this representation and warranty, Contractor shall provide such Software licenses and Deliverables at no additional charge.

12.2 Services.

Contractor represents and warrants that:

- a) It shall perform all Services required pursuant to this Contract in a professional manner, with high quality, knowledge and experience in business and systems integrations, maintenance, support and operations;
- b) The Services will comply with the Performance Standards; and
- c) Time shall be of the essence in connection with performance of the Services.
- d) Contractor shall immediately re-perform Services which are not in compliance with such representations and warranties at no cost to AOC.

12.3 Intellectual Property Rights.

12.3.1 Contractor warrants that it is the owner of the Work Products that are to be transferred and assigned to AOC in accordance with Section 9 or otherwise has the right to grant to AOC the licenses (including but not limited to licenses to Third-Party Software) described herein without violating any rights of any third party.

12.3.2 Contractor represents that, as of the Effective Date, there is no actual or threatened suit by any such third party based on an alleged violation of the rights granted or licensed by Contractor to AOC hereunder.

12.3.3 Contractor warrants that the Work Products shall not infringe or misappropriate any right of, and will be free of any claim of, any third person or entity based on patent, copyright, trade secret, unfair trade practice, or other intellectual property right.

12.3.4 Contractor hereby represents and warrants to AOC that Contractor is the owner of the Contractor Technology licensed hereunder or otherwise has the right to grant to AOC the licensed rights to the Contractor Technology provided by Contractor through this Contract without violating any rights of any third party worldwide and that AOC's exercise of the licenses within the terms of this Contract will not infringe upon any copyright, patent, trademark, or other intellectual property right worldwide or violate any third party's trade secret,

contract, or confidentiality rights worldwide. Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Contractor Technology infringes any patents or copyrights, or misappropriates trade secrets or other rights of any third party, and (ii) Contractor has no actual knowledge that the Contractor Technology infringes upon any patents, copyrights, trade secrets or other rights of any third party. AOC shall receive prompt written notice of each notice or claim of patent or copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Contractor or Technology delivered under this Contract.

12.4 Legal and Regulatory Compliance. Contractor represents and warrants that the Services and Deliverables shall comply with all applicable federal and State laws, regulations, codes, standards and ordinances. In the event that any Services performed or any Deliverables provided by Contractor are subsequently found to be in violation of such laws, regulations, codes, standards and ordinances, it shall be the sole responsibility of Contractor to bring the Services and Deliverables into compliance at no cost to AOC.

12.5 Compatibility. Contractor warrants that, if the Software, in whole or in part, is replaced or upgraded by Contractor with replacement or upgraded Software components provided by Contractor, or Contractor provides Custom Software Deliverables or Enhancements, the Custom Software shall be integrated into the Proprietary Software and the upgraded, replaced, and modified Software shall operate with the rest of the Software, Equipment and Data in the System, including without limitation, Custom Software and Third-Party Software and Enhancements, without loss of any Functions, as provided in the Specifications and without any Deficiencies. If AOC decides to produce Enhancements or to upgrade any of Third-Party Software which is used as part of the System with new versions or releases, Contractor shall, at no cost to AOC install and maintain the Software to operate in accordance with its Specifications and to be compatible with the Enhancements and new versions or releases of the Third-Party Software.

12.6 Performance Standards.

12.6.1 Contractor warrants that it shall maintain the System, in whole and in part, to meet the Performance Standards.

12.6.2 Contractor and AOC will conduct tests for measuring and certifying the achievement of the Performance Standards as described in APPENDIX C. Contractor must implement all testing, measurement and monitoring tools and procedures required to measure and report Contractor's performance of the System against the applicable Performance Standards. Such testing, measurement and monitoring must permit reporting at a level of detail sufficient to verify compliance with the Performance Standards, and will be subject to audit by AOC. Contractor will provide AOC with information and access to all information or work product produced by such tools and procedures upon request for purposes of verification.

12.6.3 If the System fails to meet all Performance Standards, Contractor shall modify, reconfigure, upgrade or replace Equipment and/or Software at no cost to AOC in order to ensure that the System complies with such Performance Standards.

12.7 Date/Time Compliance Warranty.

12.7.1 Contractor warrants that the System and all data-related output or results produced by the System: (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by AOC that may deliver date records from the Software, or interact with date records of the Software.

12.7.2 Contractor shall immediately repair or replace each of the Deliverables in breach of such representations and warranties at no additional charge to AOC.

12.8 No Surreptitious Code.

12.8.1 Contractor warrants to AOC that the Software and Contractor Technology provided to AOC under this Contract contain or shall contain no Self-Help Code nor any Unauthorized Code. Contractor further warrants that Contractor shall not introduce, via modem or otherwise, any code or mechanism that electronically notifies Contractor of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict AOC's use of or access to the Software, Data, or Equipment, in whole or in part, based on any type of limiting criteria, including without limitation frequency or duration of use for any copy of the Software provided to AOC under this Contract.

12.8.2 Contractor will defend AOC against any claim, and indemnify and hold harmless AOC against any loss or expense arising out of any breach of this warranty. AOC agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations. However, if principles of governmental or public law are involved, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor's written consent. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.

12.9 Physical Media Warranty. Contractor warrants that each copy of the Software provided by Contractor is and will be free from physical defects in the media that tangibly embodies the copy. Contractor shall replace, at Contractor's expense including shipping and handling costs, any Software provided by Contractor that does not comply with this warranty.

12.10 Power and Authority. Contractor represents and warrants that it has the full power and authority to grant to AOC the rights described in this Contract without violating any rights of any third party and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such rights by Contractor. Contractor further represents and warrants that the person executing this Contract for Contractor has actual authority to bind Contractor to each and every term, condition and obligation to this Contract, and that all requirements of Contractor have been fulfilled to provide such actual authority.

12.11 Registration. Contractor represents and warrants that it shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services, including without limitation the provisions of RCW 19.02.

12.12 OSHA/WISHA. Contractor represents and warrants that the Deliverables, when delivered to AOC, are designed and manufactured to meet then-current federal and State safety and health regulations. Contractor shall immediately repair or replace each of the Deliverables that does not meet then-current federal and State safety and health regulations at no additional charge to AOC during the applicable Warranty Period.

12.13 Written Commitments. Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute a material breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this Section, a commitment by Contractor includes: (i) Charges, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to AOC.

12.14 Manufacturers' Warranties. Contractor assigns to AOC all of the licensors' and manufacturers' warranties and indemnities relating to the Third-Party Software and Equipment manufacturers to the extent Contractor is permitted to make such assignments to AOC. Such assignment is subject to all of the terms and conditions imposed by the licensors and manufacturers with respect thereto.

12.15 Authorization. Contractor represents and warrants that:

12.15.1 Contractor is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;

12.15.2 The execution, delivery and performance of this Contract has been duly authorized by Contractor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for

Contractor to enter into this Contract and perform its obligations under this Contract;

12.15.3 Contractor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Contractor will conduct business in connection with this Contract; and

12.15.4 Contractor has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Contract and currently is in good standing with all regulatory agencies that regulate any or all aspects of Contractor's performance of the Services. Contractor will maintain all required certifications, licenses, permits, and authorizations during the term of this Contract at its own expense.

12.16 Ability To Perform. Contractor represents and warrants that:

12.16.1 Contractor has the financial stability to carry out at least six months of Services, including Maintenance during any period of this Contract without reimbursement for the Services or expenses;

12.16.2 Contractor has the financial resources to fund the capital expenditures required under the Contract without advances by AOC or assignment of any payments by AOC to a financing source;

12.16.3 Each Subcontractor providing a substantial amount of the Services under this Contract has the financial resources to carry out its duties under this Contract; and

12.16.4 Contractor's methods of accounting are consistent with generally accepted accounting principles and are capable of segregating costs by Phase, stage, segment, or cost objective in order to support Change Order accounting.

12.17 Disclaimers. WARRANTIES EXPRESSLY MADE IN THIS CONTRACT ARE CONTRACTOR'S ONLY WARRANTIES CONCERNING THE SERVICES, DELIVERABLES AND ANY WORK PRODUCT, AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. Warranty Services and Maintenance Services.

13.1 General Responsibilities. During the Warranty Period, Contractor shall provide Services as described in this Section as the Warranty Services at no additional cost to correct Deficiencies in the System, and repair and maintain the System in accordance with the Specifications. Contractor shall perform these Services after the Warranty Period during Maintenance at Charges described in APPENDIX A. Contractor's Service responsibilities shall include but not be limited to the following while assisting AOC in operating and maintaining the System:

13.1.1 Promptly repair or replace the System, or any portion thereof, that has Deficiencies;

13.1.2 Maintain the System in accordance with the Specifications and terms of this Contract;

13.1.3 Upon request by AOC, re-perform any Service that fails to meet the requirements of this Contract at no additional cost;

13.1.4 Provide these Services 24 hours a day, Monday through Sunday;

13.1.5 Propose revisions to the Software as necessary to meet AOC's Processing needs;

13.1.6 Coordinate with AOC all tasks related to correcting problems and Deficiencies connected with the Software or the Equipment; and

13.1.7 Execute on-line diagnostics from a remote Contractor location solely to assist in the identification and isolation of suspected Deficiencies.

13.2 Inquiry Assistance. Contractor shall respond to AOC inquiries as provided in APPENDIX C with the following, as applicable:

13.2.1 Responses to questions relating to the Software, including without limitation isolating problems to the Software, Data or Equipment;

13.2.2 The development, on a best efforts basis, of a temporary solution to or an emergency bypass of a Deficiency;

13.2.3 Corrections and repairs of errors, problems or Deficiencies with the Software, to the extent technically feasible; and

13.2.4 Clarification of Documentation.

13.3 Additional Assistance.

13.3.1 Contractor shall dispatch trained and qualified Services Staff to AOC's applicable Site in the event that: (i) such assistance as described above in Section 13.2 does not resolve Deficiencies or problems related to AOC's inquiries regarding Equipment or Software at such Site within four hours after Contractor's response to AOC; (ii) the System is non-operational; and (iii) AOC requests additional assistance. Contractor shall dispatch trained and qualified Services Staff to the Site within four hours of AOC's request and such Staff must be at such Site within 24 hours or otherwise mutually agreed upon in writing of AOC's request for additional assistance. If the System is non-operational, such Contractor staff shall remain at the Site on a 24-hour, seven-days-a-week basis repairing the System until it operates in accordance with its Specifications.

13.3.2 In the event that such assistance as described above in Section 13.3.1 does not resolve Deficiencies or problems related to AOC's inquiries regarding Equipment and Software at such Site for other types of conditions than described in Section 13.3.1 within 12 hours of Contractor's response to AOC, and AOC requests additional assistance, Contractor shall dispatch trained and qualified Services Staff to the Site within four hours of AOC's request and such Staff must be at such Site within 24 hours of AOC's request for additional assistance.

13.4 Database. Contractor shall maintain and make available online to AOC a database of all Change Requests, Deficiencies, other problems reported by AOC under Section 13.2 or known to Contractor in the Software, and each visit by such Services Staff as described in Section 13.3. The database shall include, as a minimum, the following:

- a) Date and time Contractor was notified;
- b) Date and time of arrival or inquiry response;
- c) Time spent for resolution of Deficiencies;
- d) Description of Deficiency;
- e) Description of severity level of Deficiency, e.g., emergency;
- f) Description of Deficiency resolution; and
- g) Date of resolution.

13.5 Deficiency Reports. Contractor shall provide to AOC, within 15 days of the Effective Date and the end of each calendar quarter thereafter, a list and description of all potential or actual problems, bugs, errors and Deficiencies known by Contractor to be in any version of the Proprietary Software and Third-Party Software used by AOC, along with a schedule for resolution thereof. Deficiencies, problems, errors and bugs causing crashes or corruption of the Data shall be reported by Contractor to AOC within eight hours of their becoming known to Contractor.

13.6 Enhancements.

13.6.1 Contractor shall provide AOC with all Enhancements and associated Documentation that are provided as general releases to the Software, in whole or in part, at no additional cost. However, at the written request of AOC and pursuant to the Change Order process in Section 15, Contractor shall expedite production of Enhancements that Contractor is planning to provide as part of a general release to the Software. Such Documentation shall be adequate to inform AOC of the problems resolved including any significant differences resulting from the release which are known by Contractor. Contractor certifies that each such Enhancement general release has been tested as a Deliverable and performs according to the Specifications.

13.6.2 Contractor agrees to correct corrupted Data that may result from any System Deficiency introduced by the Enhancement at no additional cost. Enhancements to correct any Deficiency shall be provided to AOC at no additional cost and without the need for a Change Order during the Warranty Period.

13.6.3 Contractor shall install all Enhancements in accordance with a Schedule mutually agreed to by the parties.

13.7 Exclusion. Contractor shall have no obligation or liability to AOC under this Section 13 to the extent that a Deficiency results from modifications to the System by AOC where such modification was not made pursuant to the Documentation or Contractor's guidance, instruction, training or recommendation.

13.8 Performance Standard Measurement. Contractor represents and warrants that it shall maintain the System, in whole and in part, to meet the Performance Standards. Contractor will conduct tests for measuring and certifying the achievement of the Performance Standards. Contractor must implement all testing, measurement and monitoring tools and procedures required to measure and report Contractor's performance of the Services and System against the applicable Performance Standards. Such testing, measurement and monitoring must permit reporting at a level of detail sufficient to verify compliance with the Performance Standards, and will be subject to audit by AOC. Contractor will provide AOC with information and access to all information or work product produced by such tools and procedures upon request for purposes of verification.

13.9 Continuous Improvement. Contractor represents and warrants that it shall on an ongoing basis, as part of its total quality management process, identify, report to AOC, and implement ways to improve performance of the Services and identify and apply techniques and tools from other Contractor installations that would benefit AOC either operationally or financially.

14. Dispute Resolution.

14.1 Good Faith Efforts. Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the parties agree to attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Contract, including but not limited to payment disputes, through negotiations between senior management of the parties. If the dispute cannot be resolved within 30 calendar days of initiating such negotiations, either party may terminate the dispute resolution negotiations.

14.2 Continued Performance. Contractor and AOC agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities and obligations under this Contract and shall have the right to exercise their rights and remedies.

15. Changes.

15.1 AOC Issuance of Change Requests. AOC may, at any time by a written Change Request to Contractor, request changes within the scope of the Contract. Such changes may include, without limitation, revisions to Deliverables or Services.

15.2 Contractor Response to Change Request. Contractor shall respond in writing to a Change Request within 15 business days of receipt, advising AOC of any cost and Schedule impacts. When there is a cost impact, *i.e.*, increase or decrease in Charges, Contractor shall advise AOC in writing of the increase or decrease involved, including a breakdown of the number of Staff hours by level of Contractor and AOC personnel needed to effect this change.

15.3 Contractor Submission of Change Request. Contractor may also submit a Change Request to AOC to propose changes that should be made within the scope of the Contract. Any such Change Request shall include proposed costs and Schedule impacts, including a breakdown of the number of Staff hours by level of Contractor and AOC personnel needed to effect this change. AOC will respond to such Change Requests from Contractor within 20 Days of receipt. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the Parties, the terms of this Contract shall be modified accordingly. If the parties are unable to reach an agreement in writing on a Change Request submitted by Contractor, the AOC Project Manager will be deemed to have rejected the requested Change Request.

15.4 Mutual Agreement on Change Order. The Contractor Project Manager and the AOC Project Manager shall negotiate in good faith and in a timely manner as to the price for and the impact on the Schedule of any Change Request. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the parties, the terms of this Contract shall be modified accordingly. The parties will execute a formal Contract amendment for any Change Order that increases or decreases the Maximum Amount. Change Orders must be executed by the AOC ISD Director. Contractor will promptly incorporate all Change Orders affecting the Services and Deliverables into applicable System Documentation. In no event shall the Charges be increased nor shall the Schedule be extended in a Change Order to correct errors or omissions in the Response.

15.5 Disagreement. If AOC submits to Contractor a Change Request and if the parties are unable to reach an agreement in writing within 15 business days of Contractor's response to such a Change Request, the AOC Project Manager may make a determination of the revised price and Schedule, and Contractor shall proceed with the work according to such price and Schedule which shall be included in the resulting Change Order, subject to Contractor's right to appeal the AOC Project Manager's determination of the price and/or Schedule to the dispute resolution process under Section 14. Nothing in this Section 15.5 shall in any manner excuse Contractor from proceeding diligently with the Contract as changed by the Change Order.

15.6 Termination. If Contractor fails or refuses to perform its Services pursuant to Section 15.5 or a Change Order, Contractor shall be in material breach of this Contract, and AOC shall have the right to terminate the Contract for such a breach in accordance with Section 22.1.

16. Letter of Credit. The Letter of Credit shall secure the performance of Contractor, including without limitation performance of the Services in accordance with the Work Plan and providing Deliverables in accordance with the Specifications, and shall secure any damages, cost or expenses resulting from Contractor's default in performance hereunder or liability caused by Contractor. Contractor may satisfy the obligation to provide a Letter of Credit through provision of one or more Letters of Credit on behalf of Contractor or from various sources. In the event of termination for default, the Letter of Credit shall become payable to AOC for any outstanding damage assessments made by AOC against Contractor. An amount up to the full amounts of the Letter of Credit may also be applied to Contractor's liability for any administrative costs and/or excess costs incurred by AOC in obtaining similar Software, Deliverables, other products and Services to replace those terminated as a result of Contractor's default. AOC may seek other remedies in addition to this stated liability.

17. Additional Rights and Remedies.

17.1 Liquidated Damages.

17.1.1 The parties agree that any delay or failure by Contractor to timely perform its obligations by the dates in the Work Plan and in accordance with the Performance Standards will interfere with the proper and timely Implementation of the System and Services, to the loss and damage of AOC. Further, AOC will incur major costs to maintain the functions that would have otherwise been performed by Contractor. The parties understand and agree that the following Sections describe the liquidated damages Contractor shall pay to AOC as a result of nonperformance hereunder by Contractor.

17.1.2 The parties acknowledge and agree that Contractor could incur liquidated damages for more than one Critical Event if Contractor fails to timely perform its obligations by each date.

17.1.3 The assessment of liquidated damages shall not constitute a waiver or release of any other remedy AOC may have under this Contract for Contractor's breach of this Contract, including without limitation, AOC's right to terminate this Contract, and AOC shall be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract. However, AOC will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

17.1.4 Amounts due AOC as liquidated damages may be deducted by AOC from any money payable to Contractor under this Contract, or AOC may bill Contractor as a separate item therefor and Contractor shall promptly make payments on such bills.

17.2 Withholding Payments. If Contractor fails to deliver Deliverables or to provide Services which satisfy Contractor's obligations hereunder, AOC shall have the right to withhold any and all payments due hereunder. AOC may withhold any and all such payments due hereunder to Contractor, as aforesaid, without penalty or work stoppage by Contractor, until such failure to perform is cured.

17.3 Reductions in Payments Due. Amounts due AOC by Contractor, including but not limited to liquidated or other damages, or claims for damages, may be deducted or set off by AOC from any money payable to Contractor pursuant to this Contract. AOC shall provide Notice to Contractor of any such deduction or set-off.

17.4 Cover. If, in the reasonable judgment of AOC, a default by Contractor is not so substantial as to require termination, reasonable efforts to induce Contractor to cure the default are unavailing, Contractor fails to cure such default within ten days of receipt of Notice from AOC, and the default is capable of being cured by AOC or by another resource without unduly interfering with continued performance by Contractor, AOC may, without prejudice to any other remedy it may have, provide or procure the Services reasonably necessary to cure the default, in which event Contractor shall reimburse AOC for the reasonable cost of the Services in default. In addition, Contractor must cooperate with these resources in allowing access to the Software.

17.5 Holdback. AOC shall retain a Holdback of 10% of amounts invoiced as prescribed in this Contract for Deliverables, Services and other Project tasks performed. AOC shall authorize Contractor's submission of an invoice for payment of the Holdback as described in APPENDIX A. AOC shall pay this amount in accordance with invoicing procedures in Section 3.5.

17.6 Right to Assurance. If AOC, in good faith, has reason to believe that Contractor does not intend to, or is unable to perform or has refused to perform or continue performing all material obligations under this Contract, AOC may demand in writing that Contractor give a written assurance of intent to perform. Failure by Contractor to provide written assurance within the number of days specified in the demand (in no event less than five business days) may, at AOC's option, be the basis for terminating this Contract under the terms and conditions or other rights and remedies available by law or provided by this Contract.

17.7 Suspension Due to Breach. In the event AOC determines that a breach of Contract has occurred in Contractor's (including without limitation any Subcontractor's) compliance with the conditions of this Contract or if AOC have reason to believe that fraud, abuse, malfeasance, misfeasance or nonfeasance has occurred on the part of Contractor under this Contract, and the situation is deemed by AOC to merit corrective action, the following sequential suspension procedure may be implemented by AOC:

17.7.1 AOC ISD Director will give Notice to Contractor of a perceived compliance breach describing AOC's concerns.

17.7.2 Contractor will respond to AOC ISD Director's concerns by letter describing proposed corrective actions and proposing completion dates for bringing the Contract into compliance. Such response will be sent in accordance with the Notice provisions of this Contract and delivered to AOC ISD Director within five Days of the date of receipt of AOC's letter.

17.7.3 AOC will give Notice to Contractor as to AOC ISD Director's final disposition of AOC's concerns.

17.7.4 Upon receipt of Notice of final disposition by Contractor, AOC reserves the right to suspend all, or part of, the Contract, and to withhold further payments, or to prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action, if necessary, by Contractor or a decision by AOC to terminate in accordance with Section 22.1 below.

17.8 Guaranty. Within 10 Days of the Effective Date, Contractor shall provide AOC with a Guaranty in the form of APPENDIX F, which is attached hereto and incorporated by this reference, executed by its parent company, *[Parent Company Name]*. If Contractor is acquired by, merges with or there is otherwise a change in control of Contractor to another party, that other party shall execute the Guaranty within ten Days of such acquisition, merger or change in control..

17.9 Suspension for Convenience. AOC shall have the right at any time to order the Services of Contractor fully or partially stopped for its own convenience for up to 15 consecutive days. Contractor will receive Notice of the reasons for such an order. The Schedule shall be delayed on a day-for-day basis to the extent AOC has issued a stop work order to Contractor and such stop work order is causing delays in completing Services in accordance with the Schedule. Contractor shall have the right to submit claims in accordance with the terms of Section 23.5, as a result of stop work orders issued under this Section.

18. Insurance.

18.1 Liability and Auto Insurance. Contractor shall, at its sole cost and expense, obtain, and, during the term of this Contract, maintain, in full force and effect, the insurance coverage described in this Section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of Washington and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Contractor shall include AOC, its boards, agencies, contractors, offices, employees, agents and volunteers as a named insured party in Contractor's insurance policy obtained hereunder. If Contractor fails to buy and maintain the insurance coverage described in this Section 18, AOC may terminate this Contract under Section 22.1 (Termination for Contractor's Material Breach). The minimum acceptable limits shall be as indicated below with no deductible except as indicated below:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;
- e) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, subject to Section 18.2, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate; and
- f) Crime Coverage with a deductible not to exceed \$1 million, subject to Section 18.2, and coverage of not less than \$5 million single limit per occurrence and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

18.2 Worker's Compensation Coverage. Prior to providing Services under this Contract, Contractor shall, in full compliance with State law, provide or purchase worker's compensation coverage for its employees and Employer's Liability in the minimum amount of \$1 million during the course of this Contract. AOC will not be responsible for payment of premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under applicable laws during the performance of duties and Services under this Contract. However, should Contractor fail to secure insurance coverage or fail to pay premiums on behalf of its employees, AOC may deduct the amount of premiums owing from the amounts payable to Contractor under this Contract and transmit the same to the responsible State agency.

18.3 Industrial Insurance Coverage. Prior to performing work under this Contract, Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. AOC will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee or agent of Contractor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

18.4 Subcontractors. Contractor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

18.5 Premiums. Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such insurance policies provided for AOC pursuant to this Section shall expressly provide therein that AOC be named as additional insured, and that it shall not be revoked by the insurer until 30 Days' Notice of intended revocation thereof shall have first been given to AOC by such insurer.

18.6 Cancellation. Contractor's insurance policies shall not be canceled or non-renewed in scope of coverage without provision for equivalent substitute insurance and such cancellation or nonrenewal shall not take place or reduced in scope of coverage until five business days' written Notice has been given to AOC, attention ISD Director, and Contractor has replacement insurance policy(ies) in place that satisfy the requirements set forth in this Section 18. Contractor's insurance policies shall not be reduced in scope without AOC's prior written consent.

18.7 Insurance Documents. Contractor shall furnish to AOC copies of certificates of all required insurance within 30 calendar days of this Contract's Effective Date, and copies of renewal certificates of all required insurance within 30 days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section. Failure to provide these documents shall be grounds for immediate termination or suspension of this Contract by AOC for material breach.

18.8 Increased Coverage. AOC is to be notified by Contractor immediately if any aggregate insurance limit is exceeded. In such event, additional coverage must be purchased to meet requirements.

18.9 Subrogation. Contractor agrees to waive all rights of subrogation against AOC, its boards, agencies, departments, officers, employees, agents, and volunteers for losses arising from services performed by Contractor under this Contract.

18.10 Cross-Liability. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

19. Confidential Information and Proprietary Information.

19.1 Protection Obligations.

19.1.1 Access and Protection. During the term of the Contract, Contractor and AOC will have access to and become acquainted with each party's Confidential Information and Proprietary Information. Except for disclosure pursuant to Section 19.1.2, AOC and Contractor, and each of their officers, employees and

agents, shall, subject to State laws, regulations, and court rule, and in accordance with this Section 19.1.1, maintain (a) all Confidential Information of the other party in strict confidence, and (b) all Proprietary Information in the same manner as it protects the confidentiality of its own proprietary information of like kind, but in no event with less than reasonable care. Neither party will at any time use, publish, reproduce or disclose any Confidential Information or Proprietary Information, except to authorized employees, contractors and agents requiring such information under confidentiality requirements no less restrictive than this Section 19.1.1, as authorized in writing by the other party, as otherwise specifically permitted herein, or to perform its obligations as authorized hereunder. Both parties shall take all steps necessary, including without limitation oral and written instructions to all staff to safeguard, in accordance with applicable federal and State law and regulation and this Section 19.1.1, the other party's Confidential Information and Proprietary Information against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Contract. Except for disclosures pursuant to Section 19.1.2 below, each party agrees that prior to disclosing any Proprietary Information or Confidential Information of the other party to any third party, it will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this Section 19.1.1 with respect to the Proprietary Information and Confidential Information. In addition to the requirements expressly stated in this Section 19.1.1, Contractor and its Subcontractors will comply with any policy, rule, or reasonable requirement of AOC that relates to the safeguarding or disclosure of information relating to court records, Contractor's operations, or the Services performed by Contractor under this Contract.

19.1.2 Public Record. Notwithstanding the above, Contractor acknowledges that that this Contract shall be a public record. Any specific information that is claimed by Contractor to be Proprietary Information or Confidential Information must be clearly identified as such by Contractor. AOC will maintain the confidentiality of all such information marked Proprietary Information or Confidential Information as allowed by law. If a request is made to view Contractor's Proprietary Information or Confidential Information, AOC will notify Contractor of the request and of the date that any such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, AOC will release the identified requested information on the date specified.

19.1.3 Security Requirements. Each party, and its officers, employees, subcontractors and agents shall at all times comply with all security standards, practices, and procedures which are equal to or exceed those of AOC and which the other party may establish from time-to-time, with respect to information and materials which come into each party's possession and to which such party gains access under this Contract. Such information and materials include without limitation all Proprietary Information and Confidential Information.

19.2 Audit. AOC reserves the right to audit or investigate Contractor's use of AOC Confidential Information collected, used, or acquired by Contractor under this Contract. Such auditing or investigative activities may include without limitation Salting databases.

19.3 Return. Subject to record retention laws and to AOC's rights under Section 8.1, each party shall promptly return to the disclosing party, on termination or expiration, all of the disclosing party's Confidential Information and Proprietary Information, including copies thereof.

19.4 Injunctive Relief.

19.4.1 Contractor shall immediately report to AOC any and all unauthorized disclosures or uses of AOC's Confidential Information or Proprietary Information of which it or its Staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of AOC's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to AOC. If Contractor should publish or disclose such Confidential Information or Proprietary Information to others without authorization, AOC shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

19.4.2 AOC will immediately report to Contractor any and all unauthorized disclosures or uses of Contractor's Confidential Information or Proprietary Information of which AOC is aware or has knowledge. AOC acknowledges that any publication or disclosure of Contractor's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to Contractor. If AOC should publish or disclose such Confidential Information or Proprietary Information to others without authorization, Contractor shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

19.5 Nondisclosure of Other AOC Information. The use or disclosure by Contractor of any AOC information not necessary for, nor directly connected with, the performance of Contractor's responsibility with respect to Services is prohibited, except upon the express written consent of AOC.

19.6 Exceptions. The following information shall not be considered Confidential Information for the purposes of this Contract: information previously known when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other party of such information; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

19.7 Survival. The provisions of this Section shall remain in effect following the termination or expiration of this Contract.

20. Indemnifications.

20.1 Intellectual Property.

20.1.1 Contractor shall, at its expense, defend, indemnify, and hold harmless AOC and its employees, officers, directors, contractors and agents from and against any third-party claim or action against AOC which is based on a claim that any Work Product or any part thereof under this Contract infringes a patent, copyright, utility model, industrial design, mask work, trademark, or other proprietary right or misappropriates a trade secret, and Contractor shall pay all losses, liabilities, damages, penalties, costs, fees (including reasonable attorneys' fees) and expenses caused by or arising from such claim. AOC shall promptly give Contractor notice of any such claim. AOC agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations. However, if principles of governmental or public law are involved, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor's written consent.

20.1.2 In case the Work Products, or any one or part thereof, are in such action held to constitute an infringement or misappropriation, or the exercise of AOC's rights thereto is enjoined or restricted, Contractor shall, at its own expense and in the following order of priorities: (i) procure for AOC the right to continue using the Work Products; (ii) modify the Work Products to comply with the Specifications and to not violate any intellectual property rights; (iii) or retrieve any or all Work Products upon receipt of notice from AOC and refund the Charges for each Work Product, as applicable. Notwithstanding anything to the contrary herein, the refunds that are provided under this Section are not included under the amounts of the direct damages limits set forth in Section 21.3.

20.1.3 Notwithstanding the terms above, Contractor shall not be liable to the extent claims of misappropriation of infringement arise from Contractor's compliance with any designs, Specifications or written instructions of AOC and Contractor could not have avoided such claims through alternative products, or from modifications made by any party other than Contractor.

20.2 General. To the maximum extent permitted by law and except to the extent caused by negligence of AOC, Contractor shall, at its expense, indemnify, defend with counsel reasonably approved by AOC, and hold harmless AOC, its employees, officers, directors, contractors and agents, from and against any losses, liabilities, damages, costs, obligations, fees (including without limitation reasonable attorneys' fees), and expenses from any claim, action, suit or judgment to the extent caused by or arising from: (i) the negligent acts or omissions or willful misconduct of Contractor, its officers, employees, agents, or Subcontractors, including but not limited for Property damage, bodily injury or death; (ii) a breach or alleged breach of its obligations in Section 19; or (iii) any fines, penalties, sanctions, or disallowances which are imposed on the State or Contractor (or its Subcontractors) and which arise from or are caused by any noncompliance with the

federal or State laws, regulations, codes, policies and guidelines by Contractor or its Subcontractors under this Contract. AOC shall promptly give Contractor notice of such claim and shall cooperate in the defense of such claims at Contractor's expense. AOC agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations. However, if principles of governmental or public law are involved, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor's written consent.

20.3 Waiver of Statutory Immunity. Contractor intentionally accepts the terms of this Section and waives any and all statutory immunity provided by the Washington State Industrial Insurance Act, RCW Title 51, with regard to all rights of the indemnities stated herein. THE TERMS OF THIS SECTION, SPECIFICALLY INCLUDING THE PRECEDING WAIVER OF IMMUNITY, SHALL BE DEEMED MUTUALLY NEGOTIATED, HAS BEEN EXPRESSLY AND SPECIFICALLY NEGOTIATED AND AGREED UPON BY THE PARTIES TO THE FULLEST EXTENT ALLOWED BY THE LAWS OF WASHINGTON APPLICABLE TO AOC.

21. Damages Disclaimers and Limitations.

21.1 AOC's Disclaimer of Damages. AOC SHALL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES.

21.2 AOC's Limitation of Liability. IN NO EVENT SHALL AOC'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT.

21.3 Contractor's Disclaimer of Damages. EXCEPT AS PROVIDED IN SECTION 21.5, CONTRACTOR SHALL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES. The liquidated damages specified in APPENDIX C and the damages and costs described in Section 22.5.1 (Termination Remedies) are not consequential, incidental, indirect, or special damages as those terms are used in this Section.

21.4 Contractor's Limitation of Liability. EXCEPT AS PROVIDED IN SECTION 21.5, IN NO EVENT SHALL CONTRACTOR'S AGGREGATE LIABILITY TO AOC UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY

STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT.

21.5 Exceptions to Contractor's Limitation of Liability and Disclaimer of Damages. THE DISCLAIMERS OF CERTAIN DAMAGES AND THE DAMAGES LIMITATIONS IN SECTIONS 21.3 AND 21.4 SHALL NOT APPLY TO DAMAGES, EXPENSES, LOSSES, FEES, LIABILITIES, COSTS OR OTHER AMOUNTS ARISING FROM CONTRACTOR'S INDEMNIFICATION OBLIGATIONS.

22. Termination.

22.1 Termination for Contractor's Material Breach. If Contractor fails to cure any material breaches of this Contract which are described in a written Notice from AOC within 30 Days of such Notice, this Contract may be terminated immediately, in whole or in part, by Notice from AOC. The option to terminate shall be at the sole discretion of AOC.

22.2 Termination for Rejection of Deliverables. If Contractor is unable to correct Deficiencies in a Deliverable, as described in Section 7.3, AOC shall have the right to immediately terminate this Contract, in whole or in part, without penalty or liability to AOC, and return to Contractor the Deliverable and other Deliverables that do not have value to AOC as a result of the termination, in AOC's judgment, including but not limited to the System, in whole or in part. If AOC terminates this Contract under this Section, Contractor shall, within 20 Days thereafter, refund to AOC all payments made to Contractor for the returned Deliverables and Services rendered therefor.

22.3 Termination for Conflict of Interest. AOC may terminate this Contract under Section 22.1 (Termination for Contractor's Material Breach) by Notice to Contractor if AOC determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts, including but not limited to any creating a conflict of interest.

22.4 Termination for AOC's Nonpayment. Except to the extent AOC is exercising its remedies and subject to the application of Section 3.7, if AOC fails to pay Contractor undisputed, material Charges when due under the Contract and fails to make such payments within 90 Days of receipt of Notice from Contractor of the failure to make such payments, Contractor may, by giving Notice to AOC, terminate this Contract as of a date specified in the Notice of termination. Contractor shall not have the right to terminate the Contract for AOC's breach of the Contract except as provided in this Section.

22.5 Termination Remedies.

22.5.1 Notwithstanding anything to the contrary herein, in the event of termination of this Contract by AOC under Sections 22.1-22.3, AOC shall, in addition to its other available remedies, have the right to procure the Services and Deliverables that are the subject of this Contract on the open market and, subject to the provisions of Section 21.4, Contractor shall be liable for all damages, including,

but not limited to: (i) the cost difference between the original Contract price for the Software and/or Services and the replacement costs of such Software and/or Services acquired from another vendor; and (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs.

22.5.2 If it is determined for any reason the failure to perform is not within the Contractor's control, fault, or negligence, the termination by AOC under Sections 22.1 through 22.3 shall be deemed to be a termination for convenience under Section 22.6.

22.6 Termination for Convenience.

22.6.1 In addition to its other rights to terminate, AOC may terminate this Contract, in whole or in part for AOC's convenience, by 30 Days' Notice to Contractor. Invocation of Section 22.7 (Termination for Withdrawal of Authority), or Section 22.8 (Termination for Non-allocation of Funds), shall be deemed a Termination for Convenience but will not require such ten Days' Notice.

22.6.2 During this 30 Day period, Contractor shall wind down and cease its Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on AOC from such winding down and cessation of Services. If this Contract is so terminated, AOC shall be liable only for payment in accordance with the terms of this Contract for Services satisfactorily rendered prior to the effective date of termination.

22.6.3 In case of such termination for convenience, AOC will pay to Contractor the agreed upon price, if separately stated, for Deliverables for which Acceptance has been given by AOC, amounts for Services provided prior to the date of termination for which no separate price is stated and which are not associated with or related to a specific Deliverable for which Acceptance has been given, and amounts for Deliverables which are in development but which have not received Acceptance. The amounts for such Services and Deliverables in development but not accepted will be costs actually and reasonably incurred by Contractor therefor, as based on the hourly rate in APPENDIX A, but such costs shall be no greater than the final Charges for each Deliverable.

22.7 Termination for Withdrawal of Authority. In the event that the authority of AOC to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, AOC may terminate this Contract under Section 22.6 (Termination for Convenience), in whole or in part.

22.8 Termination for Non-allocation of Funds. If funds are not allocated to continue this Contract in any future period, AOC may terminate this Contract under Section 22.6 (Termination for Convenience). AOC will not be obligated to pay any further Charges for

such future period, but AOC shall make payments for Services, Deliverables and Contractor's costs as provided in Section 22.6.3, subject to AOC's availability of funding therefor. AOC agrees to notify Contractor of such non-allocation at the earliest possible time. No penalty shall accrue to AOC in the event this Section shall be exercised.

22.9 Termination Procedure.

22.9.1 Upon termination of this Contract, AOC, in addition to any other rights provided in this Contract, may require Contractor to deliver to AOC any Property, including but not limited to Deliverables and Data, for such part of this Contract as has been terminated.

22.9.2 After receipt of a Notice of termination, and except as otherwise directed by AOC, Contractor shall:

- a) Stop work under this Contract on the date, and to the extent specified, in the Notice;
- b) Place no further orders or subcontracts for materials, Services, or facilities except as may be necessary for completion of such portion of the work under this Contract that is not terminated;
- c) As soon as practicable, but in no event longer than 30 days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of AOC to the extent required, which approval or ratification shall be final for the purpose of this Section;
- d) Complete performance of such part of this Contract as shall not have been terminated by AOC;
- e) Take such action as may be necessary, or as the ISD Director may direct, for the protection and preservation of the Property related to this Contract which is in the possession of Contractor and in which AOC has an interest;
- f) Assign or transfer real Property and Equipment leases as requested by AOC;
- g) Transfer title to AOC and deliver in the manner, at the times, and to the extent directed by the ISD Director, any Property which is required to be furnished to AOC and which has been accepted or requested by AOC; and
- h) Provide written certification to AOC that Contractor has surrendered to AOC all such Property.

22.9.3 Notwithstanding anything contained herein to the contrary, in the event this Contract is terminated by AOC due to a material breach by Contractor of its obligations hereunder or for AOC's convenience, AOC shall have the option to continue the use and operation of the System for a period of not more than 180 Days after the effective date of termination or expiration of this Contract in order to identify and complete the transition to alternative software products and services.

22.9.4 Upon the expiration of this Contract or the termination of this Contract for any reason, unless otherwise agreed to between the parties as part of a turnover plan, Contractor will provide AOC or its designee a license to use and reproduce for AOC's internal purposes Contractor Technology at no additional cost and provide technical and professional support and maintenance at rates described in APPENDIX A.

22.9.5 Upon expiration of the Contract or Contractor's receipt of notice of termination of the Contract by AOC, Contractor will provide any turnover assistance Services necessary to enable AOC or its designee to effectively close out the Contract and move the work to another vendor or to perform the work by itself. Within ten days of receipt of the Notice of termination, Contractor shall provide, in machine readable form, an up-to-date, usable copy of the Data in a format as required by AOC and a copy of all documentation needed by AOC to utilize the Data. Contractor will ensure that all consents or approvals to allow Contractor and Subcontractors to provide the assistance required following termination or expiration have been obtained, on a contingent basis, in advance and will be provided by the applicable third parties at no cost or delay to AOC.

23. General Conditions.

23.1 Anti-Trust Violations. Contractor and AOC recognize that overcharges resulting from antitrust violations are in actual economic practice usually borne by AOC. Therefore, Contractor hereby assigns to AOC any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to AOC resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Charges under this Contract.

23.2 Assignment. Contractor may not assign or transfer this Contract or any of its rights hereunder, or delegate any of its duties hereunder, without the prior written consent of AOC's ISD Director, provided that any permitted assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to AOC that may arise from any breach of the provisions of this Contract or warranties made herein including but not limited to, rights of setoff. AOC may assign this Contract in whole or in part without the consent of Contractor. Any attempted assignment, transfer or delegation in contravention of this Section of the Contract shall be null and void. This Contract shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

23.3 Authority. Neither party shall have authority to bind, obligate or commit the other party by any representation or promise without the prior written approval of the other party.

23.4 Binding Effect. Each party agrees that the Contract binds it and each of its employees, agents, independent contractors, and representatives.

23.5 Claims. Contractor must submit claims against AOC within the earlier of six months of the date upon which Contractor knew of the existence of the claim or six months from expiration or termination of the Contract. No claims shall be allowed unless Notice of such claim has been given within the above-described time period. Such claims must be submitted to the AOC Project Manager or his or her designee by Contractor in the form and with the certification prescribed by the AOC Project Manager or his or her designee. Upon failure of Contractor to submit its claim within the time allowed, all rights to seek amounts due on account of such claims shall be waived and forever barred. Submission of such claims against AOC shall be, except as provided in Sections 19.4.2 and 22.4, Contractor's sole and exclusive remedy in the event that AOC breaches this Contract.

23.6 Compliance With Civil Rights Laws. During the performance of this Contract, Contractor shall comply with all federal and applicable State nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. § 12101, *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any program provided by this Contract because of race, color, creed, marital status, religion, gender, gender orientation, national origin, Vietnam era or disabled veteran's status, age, the presence of any sensory, mental or physical disability, or political affiliation or belief. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part by AOC under Section 22.1 (Termination for Contractor's Material Breach), and Contractor may be declared ineligible for further contracts with AOC.

23.7 Conflicts Between Documents; Order of Precedence. In the event that there is a conflict between the documents comprising the Contract, the following order of precedence shall apply:

- a) Applicable federal and State laws, regulations and policies;
- b) The terms and conditions in the body of this Contract;
- c) Change Orders;
- d) Appendix A (Deliverables, Payment and Key Staff);
- e) Appendix B (Equipment and Software Configuration);

- f) Appendix C (Performance Standards);
- g) Appendix D (Escrow Agreement);
- h) The Specifications (except as otherwise listed below);
- i) The Work Plan;
- j) Other Deliverables;
- k) Appendix E (Letter of Credit);
- l) Appendix F (Guaranty);
- m) AOC's ACQ-2012-0401-RFP dated *[Month Day, Year]*;
- n) Appendix G (Revisions to the Response);
- o) Vendor's Response to AOC's ACQ-2012-0401-RFP dated *[Month Day, Year]*.

23.8 Conflicts of Interest. Contractor, by entering into the Contract with AOC to perform or provide work, Services or materials, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services or materials required to be performed and/or provided under the Contract and that it shall not employ any person or agent having any such interests. In the event that Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to AOC and take action immediately to eliminate the conflict or to withdraw from the Contract, as AOC may require.

23.9 Contract Administration

23.9.1 AOC Contract Administrator. AOC shall appoint Cheryl Mills, or her designee, as Contract Administrator for this Contract. She is designated to receive legal notices, and to administer this Contract. In coordination with the AOC Project Manager, all contract documents under PSCXXXXX requiring modification will be negotiated by the AOC Contract Administrator then forward to the AOC Contract Manager, or his designee, for final approval. The Contract Administrator will submit any finalized Contract document to Contractor for acceptance and signature. The AOC Contract Administrator will administer all Change Requests received from Contractor and coordinate approval process for all Change Orders under PSCXXXXX. She will also coordinate the resultant Contract Amendment due a mutually approved Change Order resulting in a change in schedule, scope or Maximum Amount.

AOC Contract Administrator: Cheryl Mills

Address: 1206 Quince Street SE, PO Box 41170, Olympia, WA 98504-1170

Phone: (360) 704-5505 Fax: (360) 956-5700 Email: cheryl.mills@courts.wa.gov

23.9.2 AOC Contract Manager. AOC shall appoint John Bell, or his designee, as Contract Manager for this Contract. He is designated to amend, or terminate this Contract. All contract documents under PSCXXXXX will be processed by the Contract Manager, or his designee.

AOC Contract Manager: John Bell

Address: 1112 Quince Street SE, PO Box 41170, Olympia, WA 98504-1170

Phone: (360) 704-4029 Fax: (360) 956-5700 E-mail: john.bell@courts.wa.gov

23.9.3 Contractor Account Manager. Contractor shall appoint an Account Manager for AOC's account under this Contract who will provide oversight of Contractor activities conducted hereunder. Contractor's Account Manager will be the principal point of contact for AOC concerning Contractor's performance under this Contract. Contractor shall notify AOC Contract Administrator and AOC Project Manager, in writing, when there is a new Contractor Account Manager assigned to this Contract. Contractor Account Manager information is:

Contractor Account Manager: *First and Last Name*

Address: *Street Address, City, State, Zip Code+4*

Phone: *(XXX) XXX-XXXX* Fax: *(XXX) XXX-XXXX* E-mail: *john.doe@xxxx.com*

23.10 Covenant Against Contingent Fees.

23.10.1 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Contractor.

23.10.2 In the event of breach of this Section by Contractor, AOC shall have the right to either annul this Contract without liability to AOC, or, in AOC's discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

23.11 Cooperation of Parties. The parties agree to fully cooperate with each other in connection with the performance of their respective obligations and covenants under this Contract.

23.12 Debarment and Suspension. Contractor certifies to AOC that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal or State government contracts. Contractor certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

23.13 Entire Agreement; Acknowledgement of Understanding. AOC and Contractor acknowledge that they have read the Contract and the attached `Appendices which are incorporated herein by this reference, understand them and agree to be bound by their terms and conditions. Further, AOC and Contractor agree that the Contract and the Appendices are the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Contract and supersede all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Contract, except as provided in Section 12.9.

23.14 Force Majeure. Neither Contractor nor AOC shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except Subcontractors).

23.15 Governing Law. This Contract shall be governed in all respects by the law and statutes of the State of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington. Contractor accepts the personal jurisdiction of such courts.

23.16 Headings. The headings throughout the Contract are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Contract.

23.17 Independent Status of Contractor. The parties hereto, in the performance of this Contract, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

23.18 Licensing Standards. Contractor shall comply with all applicable State and federal licensing requirements and standards necessary in the performance of this Contract.

23.19 Modifications and Amendments.

23.19.1 No modification, amendment, alteration, addition or waiver of any Section or condition of this Contract shall be effective or binding unless it is in writing and signed by an authorized representative of Contractor and AOC.

23.19.2 Only the purchasing agent(s) authorized by the AOC ISD Director or authorized delegate by writing (with the delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract on behalf of AOC. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding until made in writing and signed by the purchasing agent(s) authorized by the AOC ISD Director or authorized delegate in writing as aforesaid and Contractor, unless otherwise provided herein.

23.19.3 Contractor shall notify AOC of the names of individuals who have authority to bind Contractor to modifications to the Contract and of the limits of such authority at the time Contractor submits its Response and at such other times as required.

23.20 Non-waiver. Except as otherwise specifically provided herein, any failure or delay by either party to exercise or partially exercise any right, power or privilege under the Contract shall not be deemed a waiver of any such right, power, or privilege under the Contract. Any waivers granted by AOC for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches. Contractor agrees that AOC's pursuit or nonpursuit of a remedy under this Contract for Contractor's breach of its obligations will neither constitute a waiver of any such remedies or any other remedy that AOC may have at law or equity for any other occurrence of the same or similar breach, nor estop AOC from pursuing such remedy.

23.21 Notices.

23.21.1 Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid, return receipt requested, via facsimile or by electronic mail, to the parties at the addresses and fax number, and e-mail addresses provided in this Section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form. In the event the individual named by a party changes or no longer serves in the capacity provided, the party making such change will provide prompt written Notice of change.

To Contractor at:

To AOC at:

[Contractor]

Attn: *[Contractor Staff Name or Title]*

Street Address

City, State Zip Code +4

Phone: *(XXX) XXX-XXXX*

Fax: *(XXX) XXX-XXXX*

Email: *john.doe@xxx.com*

State of Washington

Administrative Office of the Courts

Attn: Cheryl Mills

1206 Quince Street SE

Olympia, WA 98504-1170

Phone: (360) 704-5505

Fax: (360) 956-5700

Email: cheryl.mills@courts.wa.gov

23.21.2 Notices shall be effective upon receipt or four business days after mailing, whichever is earlier. The Notice address as provided herein may be changed by Notice given as provided above.

23.22 Publicity. The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by AOC and shall not be so construed by Contractor in any advertising or publicity materials. Contractor agrees to submit to the AOC Contracts Manager all advertising, sales promotion, and other publicity matters relating to this Contract furnished by Contractor wherein AOC's name is mentioned, language used or Internet links are provided from which the connection of AOC's name therewith may, in AOC's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, press releases, sales promotion materials, publicity, or the link through print, voice, the World Wide Web and other communication media in existence or hereinafter developed without the prior express written consent of AOC prior to such use. This provision shall be applicable to any Major Subcontractors providing goods and/or services under this Contract. Contractor shall not in any way contract on behalf of or in the name of AOC.

23.23 Remedies. No remedy conferred by any of the specific provisions of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

23.24 Severability. If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

23.25 Sovereign Immunity. The parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by AOC or the State of Washington of any immunities from suit or from liability that AOC or the State of Washington may have by operation of law.

23.26 Subcontractors.

23.26.1 Contractor may, with prior written permission from the ISD Director, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Contractor's duties and obligations. Subject to the other provisions of this Section, AOC expressly consents to Contractor's use of the Subcontractors designated in its Response for the provision of the Services specified in the Response. Any such approval may be rescinded in AOC's sole discretion.

23.26.2 Contractor is responsible and liable for the proper performance of and the quality of any work performed by any and all Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to AOC for any breach in the performance of Contractor's duties. In addition, Contractor's use of any Subcontractor shall not cause the loss of any warranty from Contractor. All subcontracts will be made in writing and copies provided to AOC upon request. AOC has the right to refuse reimbursement for obligations incurred under any subcontract that do not comply with the terms and conditions of this Contract. At AOC's request, Contractor shall forward copies of subcontracts and fiscal, programmatic and other material pertaining to any and all subcontracts. For any Subcontractor, Contractor shall:

- a) Be responsible for Subcontractor compliance with the Contract and the subcontract terms and conditions; and
- b) Ensure that the Subcontractor follows AOC's reporting formats and procedures as specified by AOC.
- c) Include in the Subcontractor's subcontract substantially similar terms as are provided in Sections 3.9, 4.5– 4.8, 8.2, 9, 18, 19, 23.6, 23.9, 23.14, 23.19, and 23.27.

23.26.3 Upon expiration or termination of this Contract for any reason, AOC and/or the State will have the right to enter into direct agreements with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct agreements with AOC.

23.27 Subpoena. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Software or Services provided pursuant to this Contract is served upon Contractor or AOC, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and AOC further agree to cooperate with the other party in any lawful effort by the such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for AOC.

23.28 Survival. All Services performed and Deliverables delivered pursuant to the authority of this Contract are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of Sections 4.8 (Records Retention and Access Requirements), Section 4.9 (Accounting Requirements), Section 8.1 (Application Software and Documentation Licenses), Section 8.2 (License Grant from AOC to Contractor), Section 9 (AOC Ownership), Section 12.12 (OSHA/WISHA), Section 14, and Sections 16-23 shall survive the termination of this Contract.

23.29 UCC Applicability. Except to the extent the Sections of this Contract are clearly inconsistent, this Contract shall be governed by the Uniform Commercial Code as set forth in Title 62A RCW. To the extent this Contract entails delivery or performance of services, such services shall be deemed “goods” within the meaning of the Uniform Commercial Code, except when to do so would result in an absurdity. In the event of any clear inconsistency or contradiction between this Contract and the Uniform Commercial Code, the terms and conditions of this Contract shall take precedence and shall prevail unless otherwise provided by law.

23.30 Waiver. Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified or deleted except by a written instrument signed by the parties hereto.

The parties hereto, having read this Contract in its entirety, including all attachments hereto do agree thereto in each and every particular. In witness thereof, the parties have set their hands hereunto as of the Effective Date.

STATE OF WASHINGTON
ADMINISTRATIVE OFFICE OF THE
COURTS

[CONTRACTOR]

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:
ATTORNEY GENERAL'S OFFICE

By: _____

Printed Name: _____

Title: _____

Date: _____

APPENDIX A

PAYMENTS, KEY STAFF, DELIVERABLES, AND SERVICES

1. Payment Schedule.

1.1 Deliverables. Contractor shall have the right to issue invoices on a monthly basis in the amounts noted below for Deliverables which have received Acceptance. Such invoices will reflect the Holdback amounts which shall be due and payable as provided in Section 1.2 of this Exhibit.

1.2 Holdback. AOC will pay Contractor the Holdback following receipt by AOC of an invoice which is issued in accordance with the terms of this Contract following correction by Contractor of Cosmetic Deficiencies and all other Deficiencies that were permitted by AOC on Acceptance of each Release.

1.3 Maintenance Services. AOC shall pay Contractor for Maintenance Services monthly in arrears. AOC shall pay undisputed amounts on invoices that are issued in accordance with the terms of this Contract for Maintenance Services within 30 Days of receipt of such invoices.

2. Key Staff. *[To be completed based on RFP Response provided by Apparent Successful Vendor, and, if applicable, upon contract negotiations. See RFP Section 4 for additional information.]*

3. Maximum Amount. The Maximum Amount shall be \$_____. *[To be completed based on RFP Response provided by Apparent Successful Vendor, and, if applicable, upon contract negotiations.]*

4. Deliverables, Services, and Charges. Deliverables, Services and Charges shall be as described below. The dates in the following table shall be revised as agreed upon by the parties in the Work Plan.

5. Critical Events

Critical Event	Acceptance Date
Project Management Plan Deliverable	60 Days after Effective Date.
SC-CMS Design and Construction Plan Deliverable	60 Days after Effective Date.
SC-CMS Design Deliverable	As proposed by Contractor.
SC-CMS Interoperability Prototype Deliverable	180 Days after the Effective Date.
SC-CMS Performance Prototype Deliverable	545 Days after the Effective Date.
SC-CMS Test Plan and Environment Deliverable	As proposed by Contractor.
Pilot Implementation Test Package Deliverable	As proposed by Contractor.
SC-CMS Pilot	<i>[XX]</i> Days after the Effective Date
Release 1 of SC-CMS	<i>[XX]</i> Days after the Effective Date

APPENDIX B

EQUIPMENT AND SOFTWARE CONFIGURATION

I. Equipment: The Equipment shall be as described in Proposal Section(s) *[X]* and as otherwise agreed upon in writing between the parties during the term.

II. Software: Contractor shall provide:

A. The Software as described in Proposal Sections _____, including, but not limited to, all Interfaces listed in RFP _____ and all necessary Interfaces between Contractor supplied Software and Third Party Software (such as _____)

B. Contractor's Case Management Software, called *[Product(s) name]*.

C. *[Insert additional information following contract negotiations.]*

PERFORMANCE STANDARDS

Topic	Performance Standard	Liquidated Damages																								
Critical Events	Contractor must receive Acceptance of Critical Events by the scheduled Acceptance Date in the Work Plan	AOC shall assess up to \$1000 per Day from the scheduled Critical Event Acceptance date until the date each Critical Event receives Acceptance from AOC.																								
System Maintenance	<p>Level 1 - Emergency - The System, in whole and in part, no longer functions.</p> <ul style="list-style-type: none">Performance Standard for responding to Deficiency call is 30 minutes.Performance Standard for reporting recommended resolution and estimated fix date/time for all System components is 2 hours.Performance Standard for correction of Deficiency associated with System component located at Contractor Site is 24 hours.Performance Standard for correction of Deficiency associated with System component located at AOC Site is 24 hours. <p>Level 2 - Disabled, no Workaround – A business function or System component does not work as required, and no acceptable workaround is available.</p> <ul style="list-style-type: none">Performance Standard for responding to Deficiency call is 30 minutes.Performance Standard for reporting recommended resolution and estimated fix date/time for all System components is 2 hours.Performance Standard for correction of Deficiency associated with System component located at Contractor Site is 48 hours.Performance Standard for correction of Deficiency associated with System component located at AOC Site is 48 hours. <p>Level 3 - Minor - Non-critical, but having a negative effect on one or more business functions or System components, but a workaround that is acceptable to AOC is available.</p> <ul style="list-style-type: none">Performance Standard for responding to problem call is 30 minutes.Performance Standard for reporting recommended resolution and	<p>AOC shall assess the following liquidated damages for failure to meet each Level 1 Performance Standard.</p> <table><tr><td>\$1000/calendar day</td><td>1 – 3 days beyond Performance Standard</td></tr><tr><td>\$2000/calendar day</td><td>4 – 7 days beyond Performance Standard</td></tr><tr><td>\$3000/calendar day</td><td>8 – 14 days beyond Performance Standard</td></tr><tr><td>\$4000/calendar day</td><td>> 15 days beyond Performance Standard</td></tr></table> <p>AOC shall assess the following liquidated damages for failure to meet each Level 2 Performance Standard.</p> <table><tr><td>\$ 600/calendar day</td><td>1 – 3 days beyond Performance Standard</td></tr><tr><td>\$1200/calendar day</td><td>4 – 7 days beyond Performance Standard</td></tr><tr><td>\$1800/calendar day</td><td>8 – 14 days beyond Performance Standard</td></tr><tr><td>\$2400/calendar day</td><td>> 15 days beyond Performance Standard</td></tr></table> <p>AOC shall assess the following liquidated damages for failure to meet each Level 3 Performance Standard.</p> <table><tr><td>\$ 100/calendar day</td><td>1 – 3 days beyond Performance Standard</td></tr><tr><td>\$ 130/calendar day</td><td>4 – 7 days beyond Performance Standard</td></tr><tr><td>\$ 160/calendar day</td><td>8 – 14 days beyond Performance Standard</td></tr><tr><td>\$ 200/calendar day</td><td>> 15 days beyond Performance Standard</td></tr></table>	\$1000/calendar day	1 – 3 days beyond Performance Standard	\$2000/calendar day	4 – 7 days beyond Performance Standard	\$3000/calendar day	8 – 14 days beyond Performance Standard	\$4000/calendar day	> 15 days beyond Performance Standard	\$ 600/calendar day	1 – 3 days beyond Performance Standard	\$1200/calendar day	4 – 7 days beyond Performance Standard	\$1800/calendar day	8 – 14 days beyond Performance Standard	\$2400/calendar day	> 15 days beyond Performance Standard	\$ 100/calendar day	1 – 3 days beyond Performance Standard	\$ 130/calendar day	4 – 7 days beyond Performance Standard	\$ 160/calendar day	8 – 14 days beyond Performance Standard	\$ 200/calendar day	> 15 days beyond Performance Standard
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\$ 130/calendar day	4 – 7 days beyond Performance Standard																									
\$ 160/calendar day	8 – 14 days beyond Performance Standard																									
\$ 200/calendar day	> 15 days beyond Performance Standard																									

Topic	Performance Standard	Liquidated Damages								
	<p>estimated fix date/time for all System components is 4 hours.</p> <ul style="list-style-type: none">• Performance Standard for correction of problem associated with System component located at Contractor Site is 5 business days.• Performance Standard for correction of Deficiency associated with System component located at AOC Site is 7 business days. <p>Level 4 - Cosmetic - Non-critical and non-impacting to one or more business functions or System components.</p> <ul style="list-style-type: none">• Performance Standard for responding to Deficiency call is 30 minutes.• Performance Standard for reporting recommended resolution and estimated fix date/time for all System components is 4 hours.• Performance Standard for correction of Deficiency associated with System component located at Contractor site is 10 business days.• Performance Standard for correction of Deficiency associated with System component located at AOC site is 10 business days.	<p>AOC shall assess the following liquidated damages for failure to meet each Level 4 Performance Standard.</p> <table><tr><td>\$ 50/calendar day</td><td>1 – 3 days beyond Performance Standard</td></tr><tr><td>\$ 65/calendar day</td><td>4 – 7 days beyond Performance Standard</td></tr><tr><td>\$ 80/calendar day</td><td>8 – 14 days beyond Performance Standard</td></tr><tr><td>\$ 100/calendar day</td><td>> 15 days beyond Performance Standard</td></tr></table>	\$ 50/calendar day	1 – 3 days beyond Performance Standard	\$ 65/calendar day	4 – 7 days beyond Performance Standard	\$ 80/calendar day	8 – 14 days beyond Performance Standard	\$ 100/calendar day	> 15 days beyond Performance Standard
\$ 50/calendar day	1 – 3 days beyond Performance Standard									
\$ 65/calendar day	4 – 7 days beyond Performance Standard									
\$ 80/calendar day	8 – 14 days beyond Performance Standard									
\$ 100/calendar day	> 15 days beyond Performance Standard									
Help Desk	<p>Contractor must provide and staff a toll-free Help Desk for reporting all System Deficiencies. Help Desk must be available 100% of the time during normal business hours of 6:00AM to 7:00PM Pacific Time.</p> <p>Performance standards for the Help Desk are as follows:</p> <ul style="list-style-type: none">- At least 99% of the calls answered on or before the fourth ring or a call pick-up system may be used.- No more than 1% of incoming calls ring busy.- Contractor staff must answer at least 80% of the calls within 5 minutes.- No more than 1% of calls placed on hold more than 5 minutes.	<p>AOC shall assess up to \$100 per hour for each hour the toll-free line is unavailable during normal business hours.</p> <p>AOC shall assess up to \$100 for each occurrence that AOC identifies through its recurring monitoring processes that Help-Desk staff were not knowledgeable, helpful or polite.</p> <p>AOC shall assess up to \$10,000 for failure to meet any of these Help Desk Performance Standards for a monthly reporting period for any Contractor operated toll-free line.</p>								
Emergency Call Response	<p>Contractor must provide emergency “on call” technical support for all hours outside of normal business hours.</p>	<p>AOC shall assess up to \$200 per incident when no response is received by AOC from Contractor within 30 minutes of AOC placing an emergency call.</p>								

Topic	Performance Standard	Liquidated Damages
Monitoring Reports	Contractor must provide monthly reports to AOC to include agreed upon metrics for monitoring Help Desk performance. Reports will include at a minimum: - # of calls. - average # of rings before call answered. - # of calls answered after fourth ring. - # of calls ring busy. - # of calls abandoned. - average hold time per call. - # of calls with hold time > 5 minutes.	AOC shall assess up to \$200 per calendar day for each day an acceptable Help Desk Statistical Report is not timely received. If the Help Desk Statistical Report is received on time but the information reported is inaccurate or incomplete, AOC shall assess up to \$200 per day until an acceptable report is received.
Database	Contractor must provide an on-line database of Problem Reports to include entire history that is searchable by date, status, severity level, title. The database must be updated within 24 hours of receipt of a Problem Report or change in status of a Problem Report.	AOC shall assess up to \$200 per business day for each day the database and search capability are not fully available. AOC shall assess up to \$100 per business day per Problem Report for each day a Problem Report is late in being updated in the database.
System Availability	Every System component must be available for AOC use in accordance with Specifications 99.9% of the time during normal business hours of 6:00 AM to 7:00 PM Pacific Time Monday through Friday and 97% of the time during non-business hours.	AOC shall assess liquidated damages as specified below, per hour for each hour, or portion thereof, if the System fails to meet these availability Performance Standards. \$1,000/hr Less than 24 hours \$2,000/hr 25 – 48 hours \$3,000/hr More than 48 hours
System Performance – Response Times	Contractor must meet the following response time Performance Standards for the System for up to 700 concurrent internal State users: Record Search and/or Retrieval Time: The time elapsed after the search command is entered until the list of matching records begins to appear must not exceed 3 seconds for 95% of all record searches/retrievals. Screen Edit Time: The time elapsed after the last field is filled on the screen and the enter command executed until all fields entries are edited and the screen refreshed with the errors highlighted must not exceed 2 seconds for 95% of the time. Next Screen Page Time: The time elapsed from the request of a new	AOC shall assess liquidated damages, as specified below, for total minutes within a business week (M-F, 6:00 am – 7:00 pm Pacific Time) where each and every response time falls below the applicable Performance Standard. 10 – 20 min. \$ 2,000/wk 21 – 60 min. \$ 5,000/wk More than 60 min. \$10,000/wk

Topic	Performance Standard	Liquidated Damages
	<p>screen until the new screen and data appears must not exceed 2 seconds for 95% of the time.</p> <p>Print Initiation Time: The parties will agree during DDI on this Response Time.</p>	
System Performance Reports	<p>Contractor must provide to AOC a System Performance Report weekly which includes the following:</p> <ul style="list-style-type: none"> • Average record search/retrieval time during normal business hours. • Number of minutes during normal business hours where the record search/retrieval time fell below standard. • Average screen edit time during normal business hours. • Number of minutes during normal business hours where the screen edit time fell below standard • Average next screen page time during normal business hours. • Number of minutes during normal business hours where the next screen page time fell below standard • Average page initiation time during normal business hours. • Number of minutes during normal business hours where the page initiation time fell below standard • Average Point of Sale response time during normal business hours. • Number of minutes during normal business hours where the Point of Sale response time fell below standard • Number of claims processed • 	<p>AOC shall assess up to \$200 per calendar day for each day an acceptable System Performance Report is not timely received. If an acceptable System Performance Report is received on time but the information reported is inaccurate or incomplete, AOC shall assess up to \$200 per day until an acceptable report is received.</p>

Topic	Performance Standard	Liquidated Damages
System Turnover	Twelve months prior to the end of the initial Contract term or any renewal thereof, Contractor must develop and implement an AOC approved Turnover Plan covering the possible turnover of the System and operational activities to either the State or a successor Contractor. The Turnover Plan must be a comprehensive deliverable detailing the proposed schedule, activities, and resource requirements associated with the turnover tasks. Following turnover, Contractor must provide AOC with a Turnover Results Report documenting the completion and results of each step of the Turnover Plan. Turnover will not be considered complete until this document receives Acceptance from AOC.	AOC shall assess up to \$500 per calendar day for each day after the due date that an acceptable Turnover Plan is not submitted. AOC shall assess up to \$500 per calendar day for each day after 30 calendar days from the date of the turnover of System operations that the Turnover Results Report is not submitted.
System Turnover - Documentation	Contractor must provide to AOC or its designee, within 15 business days of any request, all updated computer Software programs, data and reference tables, scripts, and other documentation and records required by the State or its designee to operate the System.	AOC shall assess up to \$5,000 for each calendar day beyond the 15 business days that all required materials are not delivered by Contractor.
System Documentation	Contractor shall provide to AOC complete, accurate and up-to-date documentation of the System.	AOC shall assess up to \$500 per business day for each day from the scheduled Acceptance date until the date it is provided and receives Acceptance from AOC.

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the “Agreement”) is made as of this [Date] day of [Month], 2013 (the “Effective Date”), among _____ (“ESCROW AGENT”), _____ (“LICENSOR”), and the State of Washington acting by and through the Administrative Office of the Courts (“LICENSEE”).

RECITALS

LICENSOR and LICENSEE have entered into a System Contract dated the Effective Date (the “System Contract”) to license certain Third-Party Software (as defined in the System Contract) (the “Software”) upon specified terms and conditions; and

To assure the continued availability and usefulness of such Software, LICENSOR has agreed to establish and maintain in escrow with ESCROW AGENT the Software source code and certain documentation therefor.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Deposit in Escrow.

1.1 Within 30 days of the Effective Date as defined in the System Contract, LICENSOR shall deliver to ESCROW AGENT a sealed package containing the same current version of the source code for the Software which is owned by third parties, licensed to LICENSEE by LICENSOR, and is described as the Proprietary Software in the System Contract, programmer notes, its database schema and architecture, and its related documentation (collectively, the “Source Materials”). LICENSOR shall identify each item in said package and certify the completeness and accuracy of the Source Materials in a letter forwarding the same to ESCROW AGENT, with a copy of each letter to LICENSEE. Immediately upon receipt of the package, ESCROW AGENT shall give notice to LICENSEE of such receipt.

1.2 LICENSOR shall deliver revisions of the Source Materials, including the Source Code for the Software, to ESCROW AGENT as and when corresponding revisions of the Executable Code for the Software are delivered to LICENSEE in accordance with the System Contract. At such time as any modifications or revisions to the Source Materials are deposited with ESCROW AGENT, LICENSOR shall give written notice of such deposits to LICENSEE.

1.3 ESCROW AGENT shall acknowledge receipt of all revisions of or additions to the Source Materials by sending written acknowledgment thereof to both LICENSOR and LICENSEE.

1.4 Upon receipt of a new revision, ESCROW AGENT agrees to return to LICENSOR all such Source Materials from previous revisions as specified by LICENSOR in writing to ESCROW AGENT.

2. Release From Escrow.

2.1 ESCROW AGENT shall seven days following receipt of an affidavit, which is from an officer of LICENSEE to ESCROW AGENT sent via certified mail with return receipt requested, and which states that one of the following events has occurred, proceed in accordance with the procedure described in Sections 2.3 through 2.7 below if:

2.1.1 LICENSOR has made an assignment for the benefit of creditors; or

2.1.2 LICENSOR institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind; or

2.1.3 A receiver or similar officer has been appointed to take charge of all or part of LICENSOR's assets; or

2.1.4 LICENSOR terminates its maintenance and support services for LICENSEE for the Software or breaches its support and maintenance obligations for the Software for LICENSEE, whether due to its ceasing to conduct business generally or otherwise; or

2.1.5 LICENSOR fails to make timely payments of fees and other costs required under this Agreement.

2.2 LICENSEE shall send a copy of the affidavit to LICENSOR via certified mail with return receipt requested, simultaneously with its affidavit to ESCROW AGENT. Upon its receipt of the affidavit as provided above in Section 2.1, ESCROW AGENT shall immediately give written notice to LICENSOR, attaching a copy of the affidavit to the notice, via certified mail with return receipt requested.

2.3 Upon receipt of such notices in accordance with Sections 2.1 and 2.2, LICENSOR shall have 30 days to review LICENSEE's affidavit requesting release from escrow as provided for in Section 2.1 above.

2.4 If LICENSOR does not give notice to ESCROW AGENT within the 30 days provided in Section 2.3 that LICENSEE's request for release from escrow is contested by LICENSOR, ESCROW AGENT shall automatically release the Source Materials to LICENSEE. The Source Materials shall be used by LICENSEE subject to the System Contract and solely for support and maintenance for the Software within the provisions of the System Contract. Delivery of the Source Materials to LICENSEE in accordance with provisions hereof shall automatically terminate this Escrow Agreement.

2.5 If LICENSOR does give ESCROW AGENT notice within the 30 days provided in Section 2.3 that LICENSEE's request for release from escrow is contested by

LICENSOR, ESCROW AGENT shall retain the Source Materials in escrow while LICENSOR and LICENSEE either:

2.5.1 Settle the dispute among themselves and jointly give notice to ESCROW AGENT in writing of the result; or

2.5.2 Submit the dispute to the dispute resolution process below for resolution in accordance with the terms of this Agreement.

2.6 In the event of litigation, ESCROW AGENT shall dispose of the Source Materials as directed by the court of competent jurisdiction's finding given in writing to all parties.

2.7 Each party shall bear its own costs incurred in any litigation as set forth in Section 2.5 above

3. Ownership of Source Material.

3.1 The tangible medium comprising the escrowed Source Materials, but not the source code or technical specifications and other information embodied in such tangible media, shall be in the possession of ESCROW AGENT as soon as such material is received by ESCROW AGENT and at all times until the Source Materials are returned to LICENSOR or to LICENSEE as outlined in Section 2 above.

3.2 ESCROW AGENT, LICENSOR, and LICENSEE recognize and acknowledge that ownership of the source code itself shall remain the sole and exclusive proprietary property of LICENSOR at all times and that nothing in this Agreement shall be interpreted to deprive LICENSOR of any right, title or interest in or to the Source Materials.

3.3 It is expressly understood and agreed that LICENSEE's right to obtain the source code and other documentation from escrow is subject to the terms described in Section 8 of the System Contract and that LICENSEE shall have no right or claim to LICENSOR's proprietary rights in the Software.

4. Storage and Security.

4.1 ESCROW AGENT will act as custodian of the Source Materials until the escrow is terminated. ESCROW AGENT shall establish, under its control, a secure receptacle for the purpose of storing the Source Materials.

4.2 The Source Materials deposited with ESCROW AGENT by LICENSOR pursuant to this Escrow Agreement shall remain the exclusive property of the LICENSOR, except as otherwise provided in Section 2.

4.3 Except as provided in this Agreement, ESCROW AGENT agrees that:

4.3.1 It shall not divulge, disclose or otherwise make available to any parties other than LICENSOR or LICENSEE, or make any use whatsoever, of the Source Materials;

4.3.2 It shall not permit any person access to the Source Materials, except as may be necessary for ESCROW AGENT's authorized representatives to perform its functions under this Agreement;

4.3.3 Access to the Source Materials by LICENSOR shall be granted by ESCROW AGENT only to those persons duly authorized in writing by a competent officer of LICENSOR or as provided herein; and

4.3.4 Access to the Source Materials shall not be granted without compliance with all security and identification procedures instituted by ESCROW AGENT.

4.4 ESCROW AGENT shall, upon LICENSEE's request and pursuant to Section 6.4.2 of the System Contract, verify or determine that the Source Materials deposited with ESCROW AGENT by LICENSOR do, in fact, consist of those items which LICENSOR is obligated to deliver under any agreement.

4.5 ESCROW AGENT shall accept, store and deliver the Source Materials deposited with it by LICENSOR, in accordance with the terms and conditions of this Agreement.

4.6 If any of the Source Materials held in escrow by ESCROW AGENT shall be attached, garnished or levied upon pursuant to an order of court, or the delivery thereof shall be stayed or enjoined by an order of court, or any other order, judgment or decree shall be made or entered by any court affecting the Source Materials or any part thereof of any act of ESCROW AGENT, ESCROW AGENT is hereby expressly authorized in its sole discretion to obey and comply with all orders, judgments or decrees so entered or issued by any court, without the necessity of inquiring whether such court had jurisdiction, and in case ESCROW AGENT obeys or complies with any such order, judgment or decree, ESCROW AGENT shall not be liable to LICENSEE, LICENSOR or any third party by reason of such compliance, notwithstanding that such order, judgment or decree may subsequently be reversed, modified or vacated.

5. Termination. LICENSEE and LICENSOR may terminate this Agreement by mutual written agreement, giving 60 days' notice to ESCROW AGENT. This Agreement may also be terminated in accordance with the terms of Section 2.

6. Good Faith Reliance. ESCROW AGENT shall act in good faith reliance upon any instruction, instrument, or signature believed in good faith to be genuine and may assume that any person purported to give any writing, notice, respect, advice, or instruction in connection with or relating to this Agreement has been duly authorized to do so.

7. Fees. ESCROW AGENT shall be entitled to reasonable compensation for performance of its duties hereunder and for establishment of the escrow described herein. LICENSOR shall pay for the costs to establish, maintain, and verify the escrow described herein.

8. Entire Agreement. Except to the extent this Agreement incorporates by reference specific Sections of or definitions from the System Contract, this Agreement constitutes the entire Agreement among the parties, including the subject matter hereof and shall supersede all previous communications, representations, understandings and agreements, either oral or written between the parties. This Escrow Agreement is intended to be and shall be treated as an agreement separate and distinct from the System Contract.

9. Notice. Notice will deemed to be given by the parties under the Agreement if in writing and delivered personally or by messenger, by telecopier or facsimile, or mailed by first-class, registered, or certified mail, postage prepaid, to the addresses noted below the signatures on the Agreement. Each party will provide notice to the other of changes to such addresses.

10. Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Washington. LICENSOR and ESCROW AGENT consent to personal jurisdiction in that State. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

11. Severability. In the event any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

12. Headings. The headings in this Agreement do not form a part of it, but are for convenience only and shall not limit or affect the meaning of the provisions.

13. System Contract Terms. Capitalized terms not defined in this Agreement shall have the meanings provided in the System Contract. However, to the extent this Agreement is in conflict with the System Contract, the terms of this Agreement shall prevail.

14. Dispute Resolution.

14.1 Good Faith Efforts. Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the parties agree to attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Agreement, including but not limited to payment disputes, through negotiations between senior management of the parties. If the dispute cannot be resolved within 30 calendar days of initiating such negotiations, any party may terminate the dispute resolution negotiations.

14.2 Continued Performance. The parties agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities and obligations under this Agreement and shall have the right to exercise their rights and remedies.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the Effective Date.

STATE OF WASHINGTON,
ADMINISTRATIVE OFFICE OF THE
COURTS

LICENSOR

Name: _____

Title: _____

Date: _____

Notice Address: _____

Attn: _____

Facsimile No.: _____

Name: _____

Title: _____

Date: _____

Notice Address: _____

Attn: _____

Facsimile No.: _____

APPROVED AS TO FORM:
ATTORNEY GENERAL'S OFFICE

By: _____

Printed Name: _____

Title: _____

Date: _____

ESCROW AGENT

By: _____

Printed Name: _____

Title: _____

Date: _____

APPENDIX E

LETTER OF CREDIT

Bank _____

[Month Date], 2013

Irrevocable Letter of Credit

Number: _____

Amount: [US\$2,000,000]

To whom it may concern:

At the request and for the account of the State of Washington Administrative Office of the Courts we hereby establish our Irrevocable Letter of Credit Number _____ in your favor, available by draft(s) at sight on Bank _____, up to the aggregate sum of \$2,000,000 (Two Million United States Dollars), inclusive of any banking charges effective as of today's date and expiring on the end of the Warranty Period for Release 1 of SC-CMS as defined in Contract PSCXXXXX dated as of *[Month Date]*, 2013.

Partial drawings are permitted. Drafts drawn under this Letter of Credit must be accompanied by the following document:

A Certificate signed by the _____ to the effect that the amount drawn represents funds due and payable to you because of the following reason:

Nonperformance of the Contractor *[Contractor Name]* pursuant to Contract PSCXXXXX dated as of *[Month Date]*, 2013 for designing, developing, implementing, operating and maintaining the new AOC System.

We hereby agree with the drawers, endorsers and holders in due course of any draft under this Letter of Credit that such drafts shall be duly honored on presentation provided that all terms and conditions of the Letter of Credit have been complied with.

This Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (1993 Revision) International Chamber of Commerce Publication Number 500, as modified from time to time.

Yours faithfully,

For and on behalf of

Bank _____

By: _____

Title: _____

APPENDIX F

GUARANTY

In consideration of the execution by the Washington Administrative Office of the Courts (“AOC”) of the System Contract dated *[Month Day]*, 2013 (the “Contract”) with _____, Inc. (“Affiliate”), _____, Inc. (“Parent”) unconditionally and irrevocably guarantees to the AOC, on the terms and conditions herein, the full and faithful performance by Affiliate of all of the obligations undertaken by Affiliate pursuant to the Contract and as it may hereafter be amended, modified, or extended from time to time, by change orders or otherwise.

If Affiliate fails or refuses to complete any of its obligations, Parent shall complete, or cause to be completed, the obligation that Affiliate failed or refused to complete, or be considered to be in breach of the Contract to the same extent as Affiliate, pursuant to the terms and conditions of the Contract.

Parent agrees that it shall not be necessary for the AOC, or their successors or assigns to exercise their rights against Affiliate, before proceeding to enforce their rights under this Guaranty. Parent waives: (a) notice of acceptance of this guaranty; (b) notice of any amendments, change orders, extensions of time for performance, changes in the work, or other acts by the AOC affecting Affiliate’s rights or obligations under the Contract; (c) notice of any breach or claim of breach by Affiliate; and (d) the benefit of suretyship defenses generally.

Parent represents and warrants that the execution and delivery of, and performance of the obligations contained in this Guaranty have been authorized by all appropriate action and will not constitute a breach of or contravene any agreement or instrument to which Parent is a party, and that this Guaranty is a valid and binding obligation of Parent enforceable against Parent in accordance with its terms.

Notices to Parent shall be sent to the address set forth below.

_____, INC.

By: _____

Printed Name: _____

Title: _____

Address: _____

Date: _____

APPENDIX G

REVISIONS TO THE RESPONSE

[Placeholder]